TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 573

HIGHLAND FARMS DAIRY, INCORPORATED, AND LUTHER W. HIGH, APPELLANTS,

vs.

J. P. AGNEW, CHAIRMAN, KONE BRUGH, AND T. R. SNAVELY, AS MEMBERS OF THE MILK COMMISSION OF THE COMMONWEALTH OF VIRGINIA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED DECEMBER 17, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 573

HIGHLAND FARMS DAIRY, INCORPORATED, AND LUTHER W. HIGH, APPELLANTS,

vs.

J. P. AGNEW, CHAIRMAN, KONE BRUGH, AND T. R. SNAVELY, AS MEMBERS OF THE MILK COMMISSION OF THE COMMONWEALTH OF VIRGINIA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

INDEX.

	Original	Print
Record from D. C. U. S., Eastern Virginia	1	1
Caption (omitted in printing)	1	
Amended bill of complaint	1	1
Exhibit "A"—Milk and Cream Act	22	18
Exhibit "B"—Minutes of public hearing	32	30
Exhibit "C"—Rules and regulations re Arlington-Alexandria market	40	37
Motion for temporary restraining order	47	44
Order filing amended bill of complaint and convening court	51	47
Stipulation of facts	53	48
Exhibit 1—Letter, Frank S. Walker to Commission, February 19, 1936	65	59
Exhibit 2—Official State Highway Map	66	60
Exhibit 3—Letter, Governor to the General Assembly, March 10, 1934	67	61
Exhibit 4—Milk production cost survey	68	62

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 19, 1937.

—8820-C

	Original	Print
Record from D. C. U. S., Eastern Virginia—Continued		
Affidavit of Philip Rosenfeld	70	64
Application for distributor's license	73	66
Bill of complaint and proposed decree in Law and Equity Court of City of Richmond, Commission v. High et al.	75	67
Joint and separate answer of J. S. Agnew, Chairman, and Kone Brugh and T. R. Snavely, Members of Milk Commission	80	70
Legal notices of public hearing	97	84
Amended answer	98	84
Order filing amended answer	99	85
Order denying temporary restraining order, etc.	100	85
Opinion, Soper, J.	103	87
Final decree denying injunction and dismissing bill of complaint	133	113
Notice of appeal	135	114
Petition for appeal	136	115
Assignment of errors	136	115
Prayer for reversal	137	116
Order allowing appeal	139	117
Appeal bond (omitted in printing)	140	
Application for stay pending appeal	145	117
Decree of Law and Equity Court of City of Richmond	148	119
Citation with marshal's return (omitted in printing)	150	
Order on application for stay pending appeal	152	120
Præcipe for transcript of record	153	121
Stipulation as to transcript of record	155	122
Order extending time	158	122
Certificate of clerk (omitted in printing)	159	
Statement of points to be relied upon and designation as to printing record	160	123

[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA

In Equity. No. 363

HIGHLAND FARMS DAIRY, INCORPORATED, a Corporation, and LUTHER W. HIGH, Complainants,

versus

J. S. AGNEW, Chairman, and KONE BRUGH and T. R. SNAVELY, as the Members of the Milk Commission of the Commonwealth of Virginia, Defendants

AMENDED BILL OF COMPLAINT—Filed July 8, 1936

To the Honorable the Judges of the District Court of the United States for the Eastern District of Virginia, in Equity sitting:

[fol. 2] Highland Farms Dairy, Incorporated, a corporation, and Luther W. High, bring this complaint against J. S. Agnew, Chairman, and Kone Brugh and T. R. Snavely, as the members of the Milk Commission of the Commonwealth of Virginia, and respectfully show unto this Honorable Court as follows:

1. The plaintiff Highland Farms Dairy, Incorporated, a corporation, was at all times hereinafter mentioned, and still is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia, and has its principal place of business in the City of Washington, in the District of Columbia; the plaintiff Luther W. High is a citizen of the United States and a resident of the District of Columbia.

2. The defendant J. S. Agnew is the duly appointed, qualified and acting Chairman of the Milk Commission of the Commonwealth of Virginia, and the defendants Kone Brugh and T. R. Snavely are duly appointed, qualified and acting members of said Commission; said defendants maintain an office for the regular conduct of their duties as such Milk Commission of the Commonwealth of Virginia in the Eastern District of Virginia, and constitute the Milk Com-

mission; each of said defendants are citizens and residents of the Commonwealth of Virginia.

3. The ground upon which the jurisdiction of this Court depends is that this suit is one of a civil nature in equity and arises under the Constitution of the United States, as will hereinafter more fully appear. The amount in controversy in this suit exceeds the sum or value of Three Thousand Dollars ($3000), exclusive of interest and costs.

4. The plaintiff Highland Farms Dairy, Incorporated, is engaged and at all times hereinafter mentioned, has been engaged in the business of operating a creamery for the pasteurizing and processing of milk at Washington in the District of Columbia and has invested in said business a [fol. 3] sum in excess of $50,000.00; the said plaintiff corporation is not a producer of milk but buys milk from certain selected farmers or producers in the District of Columbia, State of Maryland and the Commonwealth of Virginia, for delivery of said milk to its creamery at Washington as aforesaid; the said plaintiff corporation purchases approximately 575,228 pounds of milk monthly from the farmers or producers as aforesaid, and of said total amount of milk so purchased monthly, approximately 112,449 pounds, being 19½% of the total purchased, is purchased from farmers or producers who are in the Commonwealth of Virginia. A portion of the milk so purchased in the Commonwealth of Virginia as aforesaid, has been, is and will continue to be produced in the Arlington-Alexandria production area, as hereinafter referred to.

5. In the routine procedure at the creamery of the plaintiff corporation, all milk is treated as a whole unit, without regard to the source of its supply, in that all milk, irrespective of from where it came, is poured into receiving tanks and from there pumped through a cooler into holding vats, and after pasteurizing and processing, is bottled; as a result thereof, milk received from farmers and producers, in the Commonwealth of Virginia, is commingled with milk received from farmers and producers in the District of Columbia and in the State of Maryland.

6. The plaintiff corporation sells its entire output of bottled milk to the plaintiff Luther W. High, for retail sale by said plaintiff Luther W. High in the City of Washing-

ton, District of Columbia, State of Maryland, and in the Commonwealth of Virginia, as will more fully hereinafter appear; that because of the commingling of milk at said creamery, it is impossible for any person to determine what portion, if any, of the milk delivered to the plaintiff Luther W. High, for retail sale in the Commonwealth of Virginia, [fol. 4] was produced in or purchased by plaintiff corporation, in the Commonwealth of Virginia.

7. The plaintiff corporation sells said milk to the plaintiff Luther W. High, as aforesaid, in units and at wholesale prices, as follows:

Milk, 4% butterfat	8¢ per quart.
Cultured wholemilk	6¢ per quart.
Chocolate milk	4¢ per pint.
Cream 20% butterfat	20¢ per pint.
	11¢ per half pint.
Cream 40% butterfat	30¢ per pint.
	15¢ per half pint.

8. The plaintiff Highland Farms Dairy, Incorporated has obtained all licenses and permits required by the sanitary laws and regulations effective in the City of Washington, District of Columbia, the State of Maryland and the Commonwealth of Virginia, for the lawful conduct of its said business and it has duly kept, observed and performed all of the provisions of each of said sanitary laws and regulations of the Commonwealth of Virginia, for the lawful conduct of its said business.

9. The plaintiff Luther W. High is engaged and at all times hereinafter mentioned has been engaged in the business of operating retail stores for the sale of ice cream, milk and certain other dairy products in and about the City of Washington, in the District of Columbia, the State of Maryland and the Commonwealth of Virginia, and in the course and conduct thereof engages in the business of handling and selling bottled milk in and about the Arlington-Alexandria sales area, as hereinafter referred to, in the Commonwealth of Virginia, and has invested in said business in Virginia a sum in excess of $30,000.00. The plaintiff has built up a large and extensive business in the retail sale of milk in bottles to consumers. The said plaintiff Luther W. High purchases in the District of Columbia, under con-

tracts, all of the output of bottled milk of the said plaintiff [fol. 5] Highland Farms Dairy, Incorporated. The said plaintiff Luther W. High does not purchase from producers or distributors within the Commonwealth of Virginia any milk for resale, but purchases solely and entirely from the plaintiff corporation all of the bottled milk which is sold in his stores as aforesaid.

10. The plaintiff Luther W. High sells approximately 3,460 gallons of milk monthly in the Arlington-Alexandria area, in the Commonwealth of Virginia, to the general public at retail, in units and at prices as follows:

Milk, 4% butterfat	10¢ per quart.
Cultured wholemilk	8¢ per quart.
Chocolate milk	5¢ per pint.
Cream 20% butterfat	25¢ per pint.
	13¢ per half pint.
Cream 40% butterfat	35¢ per pint.
	18¢ per half pint.

By maintenance of said units and prices the plaintiff has built up a large and lucrative business and has established in the community in which he does business a reputation for quality as high as that of any of his competitors and for prices substantially lower.

11. The plaintiff Luther W. High has obtained all licenses and permits required by the sanitary laws and regulations effective in the Commonwealth of Virginia and each city or county therein wherein he conducts his business for the lawful conduct of his said business and he has kept, observed and performed all of the provisions of said sanitary laws and regulations.

12. On or about March 29, 1934, the Governor of the Commonwealth of Virginia approved Chapter 357 of the laws of Assembly of Virginia, Session 1934, enacted by the legislature of the Commonwealth of Virginia. A copy of the said chapter is annexed hereto and marked "Exhibit A" and made a part hereof.

[fol. 6] 13. In and by the said chapter, a new temporary state agency known as the Milk Commission was created and was given full power inter alia to regulate all matters pertaining to the production, transportation, processing,

storage, distribution, delivery and sale of milk for consumption within the Commonwealth of Virginia.

14. In said chapter, it was provided in Section 1, that a "market" means any city, town or village of the Commonwealth, or two or more cities and/or towns and/or villages and surrounding territory, designated by the Commission as a natural marketing area.

15. Each of said plaintiffs are distributors, within the meaning of said chapter, wherein it is provided in said Section 1, that a distributor means any of the following persons engaged in the business of distributing, marketing or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the Commonwealth of Virginia:

"I. Persons, irrespective of whether any such person is a producer:

(a) who pasteurize or bottle milk or process milk into fluid milk;

(b) who sell and/or market fluid milk at wholesale or retail

(1) to hotels, restaurants, stores or other establishments for consumption on the premises
(2) to stores or other establishments for resale, or
(3) to consumers:

(c) who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises

"II. Persons wherever located or operating, whether within or without the Commonwealth of Virginia, who purchase, market or handle milk for resale as fluid milk in the Commonwealth of Virginia."

16. In said chapter it is provided in Section 3, subsection [fol. 7] (j) that the said Milk Commission, after public hearing and investigation, may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, provided that in determining the reasonableness of prices to be paid or charged in any market or markets, the Commission shall be guided by the cost of produc-

tion and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operation, processing, storage and delivery charges, the price of other foods, and the welfare of the general public.

17. In said chapter it is provided in Section 3, subsection (k) that the said Commission may require all distributors to be licensed by the said Commission; and by Section 5, of said chapter, it is further provided that an application to the Commission for a license to operate as a distributor shall be made within five days after the provisions of said Act become effective in a market.

18. In said chapter it is provided in Section 4 thereof that no distributor in a market in which the provisions of this Act are in effect, shall buy milk from producers or others for sale within the Commonwealth, or sell or distribute milk within the Commonwealth unless such distributor is duly licensed, under the provisions of the Act. It is further provided therein that it shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed, as required by the said Act, and that it shall be unlawful for any distributor to deal in or handle milk if such distributor has reason to believe it has previously been dealt in or handled in violation of the terms and provisions of the said Act. Since the designation of the Arlington-Alexandria Milk Market by the said Commission, as will hereinafter more fully appear, and the said chapter having become operative in said market, and the [fol. 8] plaintiffs being distributors as defined in the said chapter (Paragraph 15 herein), the effect of said Section 4 is to prohibit the individual plaintiff from buying milk from the plaintiff corporation situated and doing business beyond the Commonwealth of Virginia, unless said corporation shall obtain, which it has not, a license from said Commission, thereby resulting in interference with and burdening of interstate commerce. The aforesaid provision is inextricably interwoven with Section 3, subsection (j) of said Act under which the Milk Commission has attempted to establish Regulation No. 4, hereinafter referred to, prescribing retail and wholesale minimum selling prices in the Arlington-Alexandria Sales Area.

19. Demand has been made upon the plaintiff Luther W. High, through the manager of one of his said stores in

said market area that the plaintiff Luther W. High procure a distributor's license from defendants, but neither of the plaintiffs have applied for a license as required.

20. In said chapter it is provided in Sections 8 and 13 that any person (defined by said chapter as person, firm, corporation or association) who shall violate any provision of said chapter, shall be subject to certain money penalties, and imprisonment, in said sections more particularly set forth.

21. In said chapter it is further provided in Section 3, subsection (i) that "The Commission shall not exercise its powers in any market, until a public hearing has been held for such market and the Commission determines that it will be to the public interest that it shall so exercise its powers in such market. The Commission may on its own motion call such hearing and shall call such hearing upon the written application of a producers' association, organized under the cooperative marketing act of the Commonwealth of Virginia, supplying in the judgment of the Commission a substantial proportion of the *of the* milk con-
[fol. 9] sumed in such market."

22. Pursuant to the foregoing provisions of said chapter a public hearing was called for the Arlington-Alexandria Milk Market "upon the request of a petition submitted by the Virginia and Maryland Milk Producers' Association" and said hearing was held on February 20, 1936, as aforesaid. The particular market, to-wit, the Arlington-Alexandria Milk Market was not established until some time subsequent thereto, on to-wit, April 1, 1936, as appears from said rules and regulations hereinafter referred to as "Exhibit C", a full and complete copy of the minutes and entire proceedings of said public hearing being annexed hereto and marked "Exhibit B" and made a part hereof. At said hearing there was no sufficient, adequate or bona fide public hearing and investigation held by the said Commission to guide it in determining the reasonableness of prices and particularly the retail prices of milk, in that no inquiry was held as to the cost of production and distribution, including compliance with all sanitary regulations in force in said market, necessary operation, processing, storage and delivery charges, the price of other foods, and the welfare of the general public; that the said hearing

failed to comply with the provisions of Section 3, subsection (j) of the said Chapter (Paragraph 16 herein), and was insufficient, and inadequate and in disregard of the said provisions of the said Chapter, in that as appears from the minutes of said hearing, "Exhibit B", the said Commission failed wholly to determine as a condition precedent to the fixing of minimum and maximum wholesale and retail prices to be charged for milk in the Arlington-Alexandria Milk Market and to the exercise of the other powers of the said defendants in said market, that the exercise of such powers would be to the public interest; and as further appears from said minutes of said hearing, that the said defendants did not take any evidence, or make any effort to investigate, and [fol. 10] failed and omitted to inquire into the reasonableness of prices to be paid or charged in the said market and failed and omitted to inquire into the costs of production and distribution, including compliance with all sanitary regulations in force in said market, the necessary operation, processing, storage, delivery charges, the price of other food and the welfare of the general public. Such failure was in violation of the express requirements of Section 3, subsection (j) of said Act and a denial of due process of law in violation of the Fourteenth Amendment, Section 1, of the Constitution of the United States.

23. Thereafter and without further public hearing and investigation, the defendants, as the said Milk Commission, on, to-wit, March 27, 1936, promulgated and adopted certain rules and regulations for the supervision and control of the Arlington-Alexandria Milk Market, effective April 1, 1936, a copy of which is annexed hereto and marked "Exhibit C" and made a part thereof. Said effective date was subsequently postponed to and until June 1, 1936, and on said date the said Chapter, and the rules and regulations adopted pursuant thereto became effective in the said market. Said rules and regulations arbitrarily and capriciously fix and establish minimum prices to be paid by milk distributors to producers for milk in accordance with a classified price plan, which price plan was and is based upon the ultimate utilization by the purchasers of said milk. Said rules and regulations establish minimum wholesale and retail prices, below which distributors may not purchase or sell milk in wholesale quantities, or sell milk at retail; said

minimum wholesale and retail prices are set forth in said "Exhibit C", as Regulation No. 4.

24. The plaintiff corporation has continuously sold milk to the plaintiff Luther W. High at prices lower than the minimum, established as aforesaid, and the plaintiff Luther [fol. 11] W. High has continuously sold milk to the general consumer public at prices lower than the minimum established as aforesaid.

25. In Regulation No. 6 of said rules and regulations, it is provided that a distributor shall pay to the Milk Board all assessments levied on him by the Milk Board, except on the milk which has been purchased from licensed distributors, and said regulation providing for the levying of assessments on a distributor for milk which has not been purchased from a licensed distributor operates to require the plaintiff Luther W. High to pay duty on milk purchased from the plaintiff corporation in the District of Columbia, in interstate commerce, thereby imposing upon the purchase of milk by said plaintiff, Luther W. High, in interstate commerce an assessment which he would not have to pay on purchases made from distributors within the Commonwealth of Virginia.

26. The penalties attached to a violation of the provisions of the said Chapter, or of the rules and regulations promulgated by said Commission are so great that the plaintiff corporation may not purchase, within the Commonwealth of Virginia milk or cream necessary to be used in the course, conduct and operation of its business as aforesaid, and that the plaintiff Luther W. High may not sell, within the Commonwealth of Virginia, milk or cream purchased from the plaintiff corporation without the State, at a price lower than that required to be paid to distributors for milk and cream sold within the State, and that neither plaintiff may sell within the Commonwealth of Virginia milk or cream purchased from distributors without the State, in interstate commerce, at a price lower than that fixed by the said Milk Commission for the minimum prices within the State, and unless this Court shall determine the validity of the said Chapter, and of the rules and regulations promulgated pursuant thereto by the said Milk Commission, each of said plaintiffs will be compelled to submit to said Chapter and to

said rules and regulations promulgated pursuant thereto by [fol. 12] the said Milk Commission, whether the same be valid or invalid, and each of the plaintiffs will be deprived of his and its respective property without due process of law, and will be denied the equal protection of the laws, in violation of the provisions of the Constitution of the United States:

A. In that the said Chapter 357, in particular Sections 8 and 13 thereof, prescribe such penalties for the violation or disregard of the provisions of the Act and the regulations of the Commission as to deter, and therefore prohibit, the parties affected from asserting their constitutional rights and making a test thereof, particularly in view of the absence of any provision in said Act for an adequate judicial review of the rules and regulations of the Commission.

B. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants is an attempt to interfere with and prohibit the plaintiff corporation from shipping milk and the individual plaintiff from importing milk into the Commonwealth of Virginia from the District of Columbia and contravene the provisions of the United States Constitution, Article I, Section 8, providing that Congress shall have the power to regulate commerce among the several states and are void and unconstitutional.

C. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto as aforesaid, as interpreted in their administration by the said defendants, in requiring plaintiff corporation to purchase milk only at a price fixed by the defendants when as a part of such purchases, the seller shall ship and export said milk outside of the Commonwealth, and contravene the provisions of the United States Constitution, Article 1, Section 8, providing that Congress shall have the power to regulate commerce [fol. 13] among the several states and are void and unconstitutional.

D. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants in requiring plaintiff Luther W. High to purchase milk for

resale in the Commonwealth of Virginia only at a price fixed by the defendants, when such purchases are made outside of the Commonwealth of Virginia, contravene the provisions of the United States Constitution, Article 1, Section 8, providing that Congress shall have the power to levy imposts and duties upon products coming in from another state and are void and unconstitutional.

E. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants by requiring plaintiff Luther W. High to pay an assessment on milk purchased from the plaintiff corporation in interstate commerce, contravene the provisions of the United States Constitution, Article 1, Section 8, providing that Congress shall have the power to levy imposts and duties upon products coming in from another state, and are void and unconstitutional.

F. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants are arbitrary interf-ence with the freedom of contract and are attempts to render invalid the present and existing contracts for the purchase and sale of milk and cream heretofore made by and between the plaintiff corporation and the farmers, producers or milk sheds located in the Commonwealth of Virginia, and contravene the provisions of the Fourteenth Amendment to the United States Constitution, providing that no person shall be deprived of property without due process of law.

G. In that the said Chapter 357 and the rules and regula- [fol. 14] tions adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants are arbitrary interference with the freedom of contract and are attempts to render invalid the present and existing contracts for the purchase and sale of milk and cream heretofore made by and between the plaintiff Luther W. High and the plaintiff Highland Farms Dairy, Incorporated, located in Washington, in the District of Columbia, and contravene the provisions of the Fourteenth Amendment to the United States Constitution providing that no person shall be deprived of property without due process of law.

H. In that transactions between the plaintiff Luther W. High and the plaintiff Highland Farms Dairy, Incorporated, from which he purchases his milk and cream, are conducted and consummated in Washington, in the District of Columbia, and constitute interstate commerce and are not subject to the jurisdiction, direction or control of the Milk Commission of the Commonwealth of Virginia, represented by the defendants herein.

I. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as aforesaid, as interpreted in their administration by the said defendants are void and unconstitutional for the reason that said rules and regulations are unreasonable, arbitrary and capricious, have no reasonable relation in their operation and effect to the purpose of the said Commission and deprive the plaintiffs and each of them of their property rights in contravention of the provisions of the Fourteenth Amendment to the United States Constitution.

J. In that the said Chapter 357 and the rules and regulations adopted pursuant thereto, as interpreted in their administration by the said defendants are void and unconstitutional for the reason that the conduct of the said hearing of February 20, 1936, and the findings and conclusions adopted thereat were insufficient, inadequate and arbitrary and in violation of the requirements provided by said chapter, and constitute a denial of due process of law to the [fol. 15] plaintiffs and each of them in that there was a failure on the part of the said defendants to determine at such hearing that it will be to the public interest to exercise its powers in the Arlington-Alexandria milk market and in that further no inquiry was made into the cost of production and distribution, compliance with sanitary regulations, necessary operation, processing, storage and delivery charges, the price of other foods and the welfare of the general public, in contravention of the Fourteenth Amendment to the United States Constitution.

27. The General Assembly of Virginia in the enactment of Chapter 357, to support the Act, included a preamble in which it is declared that an economic emergency existed to relieve which and to protect the well-being of the people of the Commonwealth, the sale of milk and cream was declared to be a business affecting the public peace, health and wel-

fare. The Act was based upob the existence of a period of public emergency. There is no record or recital, however, of any breakdown in the enforcement of the sanitary and health controlling regulations, amply provided for in the then existing statutes with respect to the production and sale of milk within the Commonwealth. The provisions of the Act contain no regulations or requirements looking to sanitary measures and health protection but recognize the existence of laws and ordinances relating to the production, delivery, transportation, distribution and sale of milk in the State Sanitary Code and regulations adopted by the Dairy and Food Division and by the Boards of Health of counties and municipalities. The preamble, together with the provisions of the Act, clearly indicate the effort to deal with an economic emergency.

While the Act of the Legislature declared the existence of this emergency throughout the Commonwealth, the deter- [fol. 16] mination of the existence of such emergency in any part, and therefore in all of the State, was in said Act delegated to the Milk Commission, for no provision required the Commission to establish milk areas or prescribe prices or rules and regulations except as may be determined by the Milk Commission after hearings thereafter to be held.

Under the provisions of Section 2 the power of the Milk Commission is to first establish an area and then prescribe prices and regulations for the conduct of the business therein. The Commission is fully empowered first to create such areas and then at any time to withdraw the exercise of powers from any market. It is obviously, from the Act, within the power of the Commission to establish areas everywhere and nowhere, and the records of the Commission will show that there are large areas, particularly certain cities, including the City of Richmond, where no action has been taken by the Milk Commission to establish areas or to regulate the market. Instead, therefore, of the Legislature having exercised its sovereign right to declare emergencies and to make provision therefor, it has unlawfully and in violation of the Constitution of the Commonwealth of Virginia, and in particular, Article 4th, which vests the legislative power in the General Assembly, delegated this sovereign power to the Milk Commission.

28. Under Section 40, Article IV, of the Constitution of Virginia, it is expressly provided that—

"The legislative power of the State shall be vested in the General Assembly which shall consist of a Senate and a House of Delegates."

The delegation of certain legislative powers, in particular the regulations of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, is provided for in the Constitution of Virginia in Section 156, [fol. 17] such delegation being to the State Corporation Commission of Virginia. This provision of the Constitution delegated the authority immediately in connection with rates and charges of transportation and transmission companies and provided that the said Commission might be vested with the same power of regulation with respect to "rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges", but no authority to grant such power to any other body than the State Corporation Commission was made in the Constitution. So that the attempted delegation by the General Assembly of the right to prescribe rates and charges to the Milk Commission rather than to the State Corporation Commission, in connection with the distribution and supply of milk was and is void.

29. By reason of the enforcement of the provisions of said Milk and Cream Act and the rules and regulations promulgated by the Milk Commission, as herein set forth, the business of each plaintiff as a distributor in the Commonwealth of Virginia is and will continue to be threatened with irreparable loss if not total destruction. The individual plaintiff's business in the said Arlington-Alexandria Sales Area has, in the course of years, been developed on the basis of high quality, efficient service, and low prices, which prices are substantially lower than the prices of his competitors and the minimum prices prescribed by Regulation No. 4 of the Milk Commission. The ability of said individual plaintiff to perform the service and make delivery at the prices aforesaid has been due to his ability to make purchases of necessary supplies of milk from the plaintiff corporation and the operation of his business with a high degree of efficiency and economy. The continuance of said individual plaintiff's business on a profitable basis is dependent upon adherence to the methods which have

been heretofore adopted and the maintenance of the lower [fol. 18] scale of prices than those maintained by his less efficient competitors. A substantial reduction in volume of business will necessarily follow the inability of the individual plaintiff to continue to sell at the scale of prices heretofore maintained by him, will render it impossible for him to continue his business and thereby result in great loss to the individual plaintiff and to the plaintiff corporation.

30. Neither plaintiff has a plain, adequate or complete remedy at law, and resort must be had for relief to a court of equity.

Wherefore, upon consideration of the premises and inasmuch as each plaintiff can have adequate relief only in a court of equity, each plaintiff prays:

1. That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, J. S. Agnew, Chairman, and Kone Brugh and T. R. Snavely, as the members of the Milk Commission of the Commonwealth of Virginia, and each of them:

A. From enforcing or exercising its, or any of its powers in the Arlington-Alexandria Milk Market.

B. From making, adopting, enforcing, promulgating or putting into effect rules, regulations or orders for the supervision and control of the Arlington-Alexandria Milk Market.

C. From exercising its powers, enforcing or putting into effect in the Arlington-Alexandria Milk Market, rules, regulations, or orders, fixing minimum wholesale and retail prices to be charged for milk, requiring distributors to be licensed, or levying assessments against a distributor for milk which has not been purchased from a licensed distributor.

2. That the said Chapter 357 and the said rules and regulations adopted pursuant thereto, insofar as said Chapter 357 and said rules and regulations,

A. Prohibit or restrain plaintiff corporation from pur- [fol. 19] chasing milk in the Commonwealth of Virginia for interstate shipment or from selling milk to a distributor in the Commonwealth of Virginia in interstate commerce, unless said plaintiff shall be licensed; and

B. Prohibit or restrain plaintiff Luther W. High from purchasing or selling, within the Commonwealth of Virginia, milk which has been dealt in or handled by an unlicensed distributor, without the Commonwealth, unless said plaintiff shall be licensed; and

C. Prohibit or restrain plaintiff Luther W. High from purchasing milk, for sale within the Commonwealth of Virginia, or from selling milk within the Commonwealth of Virginia unless said plaintiff shall be licensed; and

D. Prohibit or restrain plaintiff Luther W. High from selling within the Commonwealth of Virginia milk purchased by said plaintiff without the Commonwealth of Virginia; and

E. Prohibit or restrain either plaintiff from purchasing or selling within the Commonwealth of Virginia, milk purchased without the Commonwealth at prices below the minimum established by said rules and regulations; and

F. Levy, or authorize the levy of assessments against plaintiff Luther W. High for milk purchased without the Commonwealth of Virginia from an unlicensed distributor; be declared to be unconstitutional, illegal and void, in that they violate the provisions of Article 1, Section 8, and of the Fourteenth Amendment to the Constitution of the United States, by attempting to regulate commerce between the several states, by attempting to levy imposts and duties upon products coming from another state and by depriving each plaintiff of his or its property without due process of law, and by depriving each plaintiff of the equal protection of the laws and that an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining [fol. 20] the enforcement of said Chapter, rules and regulations as hereinabove prayed.

3. That a writ, or writs of subpoena be directed to the said defendants J. S. Agnew, Chairman, and Kone Brugh and T. R. Snavely, as the members of the Milk Commission of the Commonwealth of Virginia, and each of them, commanding them, at a certain time to be and appear before this Honorable Court, then and there to answer the matters aforesaid, but not under oath, answer under oath being expressly waived, and to abide by and perform such other and further orders as to the Court shall seem meet.

4. That a hearing and determination of the application for an injunction may be made, pursuant to the provisions of Sections 380, 381 and 382 of Title 28, U. S. Code (Judicial Code, Section 266 Amended) before three judges, one of whom at least shall be a Circuit Judge of the United States as provided in said Section 380.

5. That a copy of the amended bill of complaint and of such order of injunction, temporary or permanent as may be granted, be served upon the Honorable George E. Peery, Governor of the Commonwealth of Virginia, and upon the Honorable Abram P. Staples, Attorney General of the Commonwealth of Virginia, as provided by said Section 380 of Title 28 of U. S. Code.

6. That each plaintiff may have such other and further relief in the premises as the nature of the case may require and as may be in accordance with Equity.

Highland Farms Dairy, Incorporated, by (Sgd.) C. Y. Stephens. Luther W. High. (Sgd.) Hunton, Williams, Anderson, Gay & Moore, Electric [fol. 21] Building, Richmond, Virginia; (Sgd.) Philip Rosenfeld, Woodward Building, Washington, D. C., Solicitors for Plaintiffs.

Duly sworn to by Luther W. High and C. Y. Stephens. Jurats omitted in printing.

[fol. 22] EXHIBIT "A" TO COMPLAINT

Milk and Cream Act

An Act to Provide for the Supervision, Regulation and Control of the Production, Processing, Transportation, Storage, Distribution, and Sale of Milk and Cream; to Create a Milk Commission and Local Milk Boards and to Define and Provide for the Functions, Duties and Powers Thereof.

[Seal Virginia]

Reprinted from Acts of Assembly, Session 1934

[Chapter 357]

Richmond Division of Purchase and Printing 1935

[fol. 23] Milk and Cream Act

Chap. 357.—AN ACT to provide for the supervision, regulation and control of the production, processing, transportation, storage, distribution, and sale of milk and cream; to create a Milk Commission and local milk boards and to define and provide for the functions, duties and powers thereof; to provide for the appointment, suspension, removal, compensation, costs, and expenses of such commission and boards and the members, officers, agents and employees thereof; to provide for licensing processors, bottlers, wholesalers, distributors, and retailers of milk and cream, or either; to provide for the raising of funds for the administration of this act and to provide for the disposition of revenue collected hereunder and to impose penalties for violation of the provisions of this act.

[H B 396]

Approved March 29, 1934

Whereas, the production and distribution of milk and cream is an industry upon which, to a substantial degree, the prosperity and health of the people of the Commonwealth of Virginia depend; and the present economic emergency is in part the result of the disparity between the prices of milk and cream and other commodities, which dis-

parity has diminished the power of milk producers to purchase industrial products, has broken down the orderly production and marketing of milk and cream, and has seriously impaired the agricultural assets supporting the credit structure of the Commonwealth and local political subdivisions thereof; and

Whereas, unhealthful, unfair, unjust, destructive and demoralizing economic trade practices have grown up, and are now carried on in the production, sale and distribution of milk, and milk and cream products in the Commonwealth, which impair the dairy industry in the Commonwealth, and the constant supply of pure wholesome milk to the inhabitants thereof, and constitute a menace to the health and welfare of the inhabitants of the Commonwealth; and

Whereas, in order to protect the well-being of the people of the Commonwealth of Virginia, and to promote the public welfare, public health and public peace, the production, transportation, processing, storage, distribution, and sale of milk and cream in the Commonwealth of Virginia, is hereby declared a business affecting the public peace, health and welfare, which should be supervised and controlled in the exercise of the police power of the Commonwealth in the manner hereinafter provided; now, therefore,

1. Be it enacted by the General Assembly of Virginia, as follows:

Section 1. Definitions.—As used in this act, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

"Person" means any person, firm, corporation or association.

"Commission" means the milk commission created by this act.

[fol. 24] "Distributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the Commonwealth of Virginia:

I. Persons, irrespective of whether any such person is a producer:

(a) who pasteurize or bottle milk or process milk into fluid milk;

(b) who sell and/or market fluid milk at wholesale or retail

(1) to hotels, restaurants, stores or other establishments for consumption on the premises

(2) to stores or other establishments for resale, or

(3) to consumers;

(c) who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

II. Persons wherever located or operating, whether within or without the Commonwealth of Virginia, who purchase, market or handle milk for resale as fluid milk in the Commonwealth of Virginia.

"Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk for sale as fluid milk in the Commonwealth of Virginia.

"Producer-distributor" means a distributor who handles only milk produced by himself.

"Consumer" means any person, other than a milk distributor who purchases milk for human consumption.

"Market" means any city, town or village of the Commonwealth, or two or more cities and/or towns and/or villages and surrounding territory designated by the commission as a natural marketing area.

"Licensee" means a licensed milk distributor.

"Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed and kept; including milk that is cooled, pasteurized, standardized or otherwise processed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several trade forms) and skimmed milk; said term excludes the lacteal secretion of one or more dairy animals where lacteal secretion is sold or intended to be sold for any other purpose.

"Subsidiary" means any person of, or over whom or which a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

"Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual or legal con-

trol, over a distributor, whether by stock ownership or in any other manner.

[fol. 25] "Board" means the local agency authorized by this act to administer the operation of the act in each market area operating under the provisions of this act, to be known as the "milk board" of the particular market area in which it functions.

"Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

"Health authorities" includes the State Board of Health, the Virginia Dairy and Food Division of the State Department of Agriculture and Immigration and the Director thereof, and the local health authorities.

"Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

Section 2. Milk Commission.—(a) There is hereby created a Milk Commission, consisting of three members, two of whom shall be producers of milk who are not directly or indirectly engaged in the distribution thereof, and the third member shall have no connection financially or otherwise with the production or distribution of milk or products derived therefrom, who shall be appointed by the Governor of Virginia to hold office at the pleasure of the Governor and may be removed at any time by the Governor. Any vacancies occurring shall be filled by appointment by the Governor. One member of said commission shall act as chairman, as designated by the Governor. The technical and other services for such commission shall be performed, so far as practicable, by forces and officers in the Department of Agriculture and Immigration, the Virginia Agricultural Extension Division of the Virginia Agricultural Experiment Station, without additional compensation. The Milk Commission may appoint and, at pleasure, remove the secretary of the Milk Commission and any such additional technical and other assistants and employees as may be necessary to carry out the provisions of this act, and to prescribe their powers and duties.

(b) The members of the Milk Commission shall be paid each the sum of ten dollars per day for each day actually spent in the performance of their official duties, plus their actual and necessary expenses.

(c) The commission shall fix the compensation of the secretary of the Milk Commission and other employees.

(d) The secretary shall, subject to the limitations herein contained and the rules and regulations of the commission, enforce the provisions of this act, but no official act shall be taken, rule or regulation be promulgated, or official order made or enforced, with respect to the provisions of this act, without the approval of the majority of the members of the commission.

[fol. 26] (e) The principal offices of the commission shall be in the city of Richmond, in rooms assigned by the Director of the Division of Grounds and Buildings.

(f) Two members of the commission shall constitute a quorum.

Section 3. Powers.—The commission is hereby declared to be an instrumentality of the Commonwealth, vested with power:

(a) To confer and co-operate with the legally constituted authorities of other states and of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the Commonwealth and going out of the Commonwealth in interstate commerce, with a view of accomplishing the purposes of this act, and to enter into a compact or compacts for such uniform system of milk control.

(b) To investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the Commonwealth of Virginia.

(c) To supervise, regulate, and control the production, transportation, processing, storage, distribution, delivery and sale of milk for consumption within the Commonwealth of Virginia.

(d) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and

distributors, as between themselves, or that may arise between them as groups.

(e) To examine into the business, books and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpœnas to milk producers, associations of producers, and milk distributors, and to require them to produce their records, books and accounts; to subpœna any other person from whom information is desired.

(f) To take depositions of witnesses within, or without, the Commonwealth. Any member of the commission, or any employee designated by the commission, may administer oaths to witnesses and sign and issue subpœnas.

(g) To make, adopt and enforce all rules, regulations and/or orders necessary to carry out the purposes of this act. Every rule or order of the commission shall be posted for inspection in the main office of the commission, and a certified copy filed in the office of the Commissioner of Agriculture. An order, applying only to a person or persons named therein, shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby; or, in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served. The posting in the main office of the commission of any rule and of any order, not herein required to be served, and such filing in the office of the Commissioner of Agriculture, shall constitute due [fol. 27] and sufficient notice to all persons affected by such rule or order.

(h) The operation and effect of any provision of this act conferring a general power upon the commission shall not be impaired or qualified by the granting to the commission by this act of a specific power or powers.

(i) The commission shall not exercise its powers in any market until a public hearing has been held for such market, and the commission determines that it will be to the public interest that it shall so exercise its powers in such market. The commission may, on its own motion, call such hearing, and shall call such hearing upon the written application of

a producers' association organized under the co-operative marketing act of the Commonwealth of Virginia, supplying in the judgment of the commission a substantial proportion of the milk consumed in such market, but if no such producers' association exists on said market, the commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at such time and place and after such notice as the commission may determine.

The commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the commission determines that it will be to the public interest to withdraw the exercise of its powers from such market. The commission may on its own motion, call such hearing, and shall call such hearing upon the written application of a producers' association organized under the co-operative marketing act of Virginia, supplying in the judgment of the commission, a substantial proportion of the milk consumed in such market, but if no such producers' association exists on said market, the commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at such time and place and after such notice as the commission may determine.

The commission shall withdraw the exercise of its powers from any market upon written application of a majority of the producers (measured by volume) of milk produced and a majority of the distributors (measured by volume of milk distributed) in said market acting jointly.

(j) The commission, after public hearing and investigation, may fix the prices to be paid producers and/or associations of producers by distributors in any market or markets, may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may [fol. 28] also fix different prices for different grades of milk. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade,

quantity, or class of milk, the commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operation, processing, storage and delivery charges, the prices of other foods, and the welfare of the general public.

(k) The commission may require all distributors in any market designated by the commission to be licensed by the commission for the purpose of carrying out the provisions of this act. The commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing. The commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a particular market or markets within the Commonwealth.

(l) Any member of the commission, or employee designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is stored, bottled or manufactured into food products. Any member of this board, or designated employee shall have the power to inspect books and records in any place within the Commonwealth for the purpose of ascertaining facts to enable the board to administer this act, and all such information shall be confidential, unless the parties concerned agree to its being given out. The commission may combine such information for any market or markets and make it public.

(m) The commission may define what shall constitute a natural market area and define and fix the limits of the milkshed or territorial area within which milk shall be produced to supply any such market area; provided, that producers, producer-distributors, or their successors now shipping milk to any market may continue so to do until they voluntarily discontinue shipping to the designated milk market.

(n) The commission may delegate such of the powers given it by this act as it sees fit to the milk board in any particular market area, for the purpose of carrying out the provisions of this act within said market area.

(o) Each licensee shall, from time to time, as required by the commission, furnish to the commission verified re-

ports containing such information as the commission may require.

Section 4. No distributor in a market in which the provisions of this act are in effect shall buy milk from producers, or others, for sale within the Commonwealth, or sell or distribute milk within the Commonwealth, unless such distributor is duly licensed under the provisions of this act. It shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed as required [fol. 29] by this act. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe it has previously been dealt in, or handled, in violation of the terms and provisions of this act.

Section 5. An application to the commission for a license to operate as a distributor shall be made by mail or otherwise within five days after the provisions of this act become effective in a market, and as to any distributor thereafter beginning business, before such distributor shall begin such business therein. The application shall be made on blanks furnished by the commission for the purpose.

Section 6. Any order of the commission in refusing to issue a license, or suspending or revoking, a license, may be reviewed on appeal to the Supreme Court of Appeals.

Section 7. The licenses required by this act shall be in addition to any other licenses required by existing laws of the Commonwealth of Virginia or by any municipal ordinance. Nothing in this act shall be construed to conflict with or repeal any laws now in force in the Commonwealth of Virginia relating to any board of health or sanitary code now in force in this Commonwealth or in any municipality thereof, nor any municipal ordinances relating to the inspection, grading, production, sale or distribution of milk.

Section 8. Any person failing or refusing to comply with any subpœna issued by the commission or pursuant to its authority, shall be deemed guilty of a misdemeanor, and upon conviction, may be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding ninety days, or both, and each day during which such violation shall continue shall be deemed a separate offense. In the event any person shall fail to comply with any rule, regulation or order of the Commission, or obey any sub-

pœna issued thereby, or in the event of the refusal of any witness to testify to any matter concerning which he lawfully may be interrogated by the commission or its representative, it shall be the duty of the hustings court of the city of Richmond, or judge thereof, upon application of the commission, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpœna issued from said court, refusal to testify therein, or disobedience of an order or decree of such court. The proceedings herein authorized in the hustings court to compel obedience shall be in addition to the provisions of this section defining what shall constitute a misdemeanor and providing and prescribing the punishment therefor.

Section 9. The Milk Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the local milk boards in the form of monthly assessments, and the local milk boards shall pay the assess-[fol. 30] ments so levied. The assessments so levied shall not exceed two cents per hundred pounds of milk handled in each market in which the provisions of this act are in operation.

Section 10. All receipts from assessments paid under this act shall be paid by the commission to the State Treasurer and shall be placed by the State Treasurer in the general fund to the credit of an account to be known as the "Milk Commission account" and such amount as may be necessary, and no more, hereby is appropriated out of such Milk Commission account for the payment of all expenses incurred by the Milk Commission in administering and enforcing this act.

Section 11. Local milk boards.—(a) Members. For the purpose of securing the benefits of this act, in any market area, the producers and distributors and producer-distributors in that market area shall establish a milk board of five members to carry out the provisions of this act in conjunction with the State Milk Commission. Each local milk board shall be composed of two representatives of the producers supplying milk to the market, one of whom shall be named by the producers' co-operative marketing association operating in the market, and in markets where the producers' co-operative market association handles the selling

of fifty per centum or more of the milk, the association shall have the right to name both representatives of the producers on the milk board; and two representatives of the distributors operating in the market.. In markets where producer-distributors handle fifty per cent or more of the milk used in the market the Milk Commission shall determine the representation of the producers, the producer-distributors and distributors on the milk board on a basis fair to all parties.

The Milk Commission shall appoint the fifth member of the milk board to represent the consumers and the public interest, who shall serve as chairman of the board. The representative of the consumers and the public interest shall have no connection financially or otherwise with the production or distribution of milk or products derived therefrom.

(b) Expenses. The expenses of the milk board, including salaries and/or the per diem of such personnel as the board finds it necessary to employ to properly carry out its functions under this act, and including the assessments levied by the State Milk Market Commission, shall be met by an assessment of not over two cents per hundred pounds of milk and/or cream (converted to terms of milk of four per cent butterfat) handled by distributors and not over two cents per hundred pounds of milk and/or cream (converted to terms of milk of four per cent butterfat) sold by producers. The exact amount of each monthly or semi-monthly assessment shall be determined by the milk board as necessary to cover its expenses. All assessments shall [fol. 31] be paid at the time the distributors pay the producers for the milk. All officers and employees of the milk board who handle funds of the board, or who sign or countersign checks upon such funds, shall severally give bond in such amount and with such sureties as shall be determined by the milk board. The cost of such bonds shall be paid by the milk board and the milk board shall determine the amount and sufficiency of such bonds.

(c) Powers.—The milk board shall perform such functions as the Milk Commission shall delegate to it.

Section 12. In the event of violation of any provision of this act, in addition to any other remedy, the commission may apply to any court of record in the city of Richmond

for relief by injunction, if necessary, to protect the public interest, without being compelled to allege or prove that any adequate remedy at law does not exist.

Section 13. Penalties.—Any person violating any provision of this act or of any license issued by the commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violating the provisions of this act shall be instituted by the Commonwealth's attorney of the Commonwealth, or otherwise, in any county or city of the Commonwealth of Virginia in which the provisions of this act are in effect.

Section 14. Saving clause.—No provision of this act shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto.

Section 15. Conflicting laws.—The making of marketing agreements between producers' co-operative marketing associations and distributors and producer-distributors under the provisions of this act shall not be deemed a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this act, be considered illegal or in restraint of trade. All laws or parts of laws in conflict with the provisions of this act are hereby repealed to the extent necessary for the full operation of this act.

Section 16. Constitutionality.—If any section, clause, or sentence or paragraph shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

Section 17. Termination.—The period of public emergency during which this act shall be effective shall be until

such date as the Legislature may, by joint resolution, designate to be the termination thereof, or if the Legislature be not in session the date so designated by a proclamation of the Governor.

2. An emergency existing, this act shall be in force from its passage.

[fol. 32] EXHIBIT "B" TO COMPLAINT

Arlington-Alexandria Public Hearing

February 20, 1936.

The public hearing for the Arlington-Alexandria market was held in the John Marshall Hotel, Richmond, Virginia, at Ten o'clock a. m., Thursday, February 20, 1936. The Virginia Milk Commission composed of J. S. Agnew, chairman, Kone Brugh, and T. R. Snavely were present for this hearing.

The attendance of the hearing consisted of the following dairymen:

B. B. Derrick, C. F. Bletch, Frank S. Walker, R. L. Torreyson, G. Wallace Carper, B. B. Iden, Mark Turner, J. H. Carper, Thomas Elgin, Maryland and Virginia Milk Producers' Association.

M. V. Davison, Chestnut Farms Dairy, Washington, D. C.

A. L. Thompson, Thompson's Dairy, Washington, D. C.

M. A. Burchell, Alexandria Dairy Products Company, Alexandria, Va.

W. S. Snow, Attorney, Alexandria Dairy Products Company.

P. H. Berenter, Auditor, Alexandria Dairy Products Company.

J. Marcey, Arlington County Dairy, Clarendon, Va.

Frank Davis, Marcey Dairy, Clarendon, Va.

W. A. Hazel, Falls Church, Va.

Sam Fagelson, producer, Alexandria, Va.

A. J. Storm, Merchant, Alexandria, Va.

G. V. Carper, Milk hauler, Alexandria, Va.

Mr. Agnew opened the meeting by explaining that the hearing was called upon the request of a petition submitted by the Virginia and Maryland Milk Producers' Association.

He further explained that legal notices were sent to the weekly paper in Falls Church and to the Alexandria Gazette, and that letters had been sent to the large distributors notifying them of the hearing. Mr. Agnew then called on Mr. Derrick of the Maryland and Virginia Milk Producers' Association:

Statements from Dairymen

Mr. Derrick: "I am going to submit a very brief brief to the Milk Commission of Virginia." He read and submitted the brief.

Mr. Bletch of the Maryland and Virginia Milk Producers' [fol. 33] Association read and presented to the Commission a tentative production area which Mr. Walker, pres-ent of the Association, stated was set up at the time they were considering the federal license. Mr. Agnew asked if there were any objections to the production area, as suggested, and there was no response.

Mr. Agnew then called on Mr. Davisson of Chestnut Farms Dairy.

Mr. Davison: "I am here merely as a spectator, we sell milk in the Virginia territory, but it is not all produced in that area. It will affect us, but we were not part of the committee that asked for the hearing."

Mr. Agnew: "Do you have any objections to the Commission's coming into your market."

Mr. Davison: "No objections whatsoever."

Mr. Agnew: "Mr. Thompson, Thompson's Dairy."

Mr. Thompson: "We are in the same category with Mr. Davison. We have a full contract with the Producers' Association. We have no objections to the regulations."

Mr. Agnew then called on Mr. Burchell of the Alexandria Dairy Products Company.

Judge W. S. Snow (representing Mr. Burchell): "This question has been completely discussed, and I have been in conference with Major Gibson and he feels, as I do, that no Milk Commission can control the price of milk in this area. That is, to regulate interstate milk." Judge Snow further explained that the Sanitary Grocery Company and the Atlantic and Pacific Grocery Company handled a very large quantity of milk in Alexandria, which of course they received at the wholesale price. This milk came from various points. Under state control, the regulated dairies could not compete with this unregulated milk which would certainly

be sold to these concerns. He stated further, "It would hurt us since the Sanitary Grocery and the Atlantic and Pacific Grocery are our largest customers and we feel that the establishment of milk control board in our area would [fol. 34] not be satisfactory."

Mr. Davison: "What would be the attitude of the "Judge" as to the wholesale price to stores?"

Judge Snow: "There is no way for you people to control the production since there is no way in the world to tell where this milk to stores is coming from. If we are "pegged" to a retail, wholesale, and buying price, we will just be lost!".

Mr. Agnew: "Does very much milk come in from Maryland?" Question unanswered.

Dr. Snavely asked the question in regard to health regulations in Washington. They were reported to be very stringent. General discussion followed.

Mr. Agnew: "Mr. Burchell, do you think it is worth the effort to try the regulations and do you think you could be any worse off than you are today?"

Judge Snow: "We can meet competition now, but if the prices are 'pegged', we will not be able to meet the prices. We can buy a cheap milk for manufacturing purposes, but under the proposed set up, we will not be able to do so. We are not against state control, but we believe that it will do us harm in so far as interstate control is concerned." Judge Snow gave illustration of Alexandria distributor going into Washington and getting his milk cheaper.

Mr. Agnew: "That is a question we must consider. We do not want to hinder you people, if we cannot help you. But how far could a man get by taking his orders from Washington?"

Judge Snow: "I do not know, but some people would do anything to get around the law. It is that type of competition that gets around the law, and ignores it."

Mr. Agnew: "Get down to practical application—If your local board finds a Washington distributor is selling milk [fol. 35] under the regulated price and an injunction is gotten out, the violator would have to prove where every bit of milk he got came from. Could he do that?"

Judge Snow: "I don't know, but I guess he could lie about that too."

Judge Snow at this time introduced Mr. Sam Fagelson, a producer, and one of Mr. Burchell's shippers:

Mr. Fagelson: "I represent the milk producers of Fairfax who ship their milk to Alexandria Dairy. I am only a producer. I ship my milk to Mr. Burchell. We are well satisfied now, and we do not know what will happen if conditions are changed. The people I represent told me to say that we have a market now, and we don't know what will happen if changed. We get the Washington price of 26½¢ per gallon."

Judge Snow: "We do not go into Arlington County, and we do not wish in any way to hinder your going into that area."

Mr. Agnew: "Mr. Burchell, if we take care of your manufacturing proposition, do you mind giving the regulations a trial?"

Mr. Burchell: "We would have to think about it."

Mr. Agnew then called on Mr. Hazel, an independent distributor in the vicinity of Falls Church.

Mr. Hazel: "I believe my position is a little different from any other representative of the various groups. I really am a small business man, and I can strongly endorse what Judge Snow had to say about the proposition. I am opposed to any form of price regulation. I think it is my freedom to sell milk any way I please. I want to go on record that I am absolutely opposed to any form of regulation."

Mr. Agnew: "What is your gallonage?"

Mr. Hazel: "500 to 600 gallons per day. I sell in a radius of about three square miles in the heart of Arlington [fol. 36] County."

Mr. Agnew: "Do you retail milk-"

Mr. Hazel: "Yes, and I have my own price which is the only way I can meet competition. I'm operating a small business and it is a close corporation. We own our own property and things are closely supervised. If we can sell milk at our own price and make a fair profit, I do not think anyone has anything to do with me. I have been in business about five years. There are a number of distributors in my area—practically all of the Washington distributors. Chestnut Farms has about fifteen wagons in our area, Thompson's Dairy has several, Marcey Bros. about five, the

Embassy has several and we have five. We have a fixed buying price and I pay my producers promptly. I pay as much for the last gallon of milk I buy, as I do for the first. My producers consist of those who do not have Washington permits, but only have state permits to sell milk."

Mr. Agnew: "What price do you pay your producers?"

Mr. Hazel: "20¢ per gallon for 4% milk, and a percentage of increase or decrease for all milk over or below 4%. I say again that I am very much opposed to any form of control."

Judge Snow: "I should like to go into the percentage of milk handled in Alexandria. Mr. Burchell handles about 2,000 gallons per day which is about 75% of the milk in Alexandria."

The following report was made:

Alexandria Dairy Products	2,000 gallons per day.
Arlington County Dairy	700 gallons per day.
Chestnut Farms Dairy	2,000 gallons per day.
Thompson's Dairy	480 gallons per day.
Hazel's Dairy	600 gallons per day.
Raw Milk P. D.	400 gallons per day.
Model Farms Dairy	100 gallons per day.
M. S. Good Dairy	300 gallons per day.
Embassy Dairy	400 gallons per day.

Mr. Derrick: "I think it would be of interest to know the retail price of various distributors."

Mr. Burchell: "Our price is 13¢ per quart."

[fol. 37] Mr. Agnew: "Do you attempt to meet competition?"

Mr. Burchell: "I have to in some cases."

Mr. Agnew: "Mr. Hazel, do you have your own price?"

Mr. Hazel: "Yes, I recognize my own prices."

Mr. Agnew: "How is High's milk being sold in Alexandria?"

It was reported that High's lowest price in the last few weeks was 8¢ per quart, and he sold 3.7% milk for 10¢.

Sales Area

Mr. Agnew: "What is the proposed sales area?"

Mr. Derrick: "Mr. Davis of Marcey Dairy had the map of the sales area, he has not come." However, Mr. Davis

came in about that time, and presented to the Commission and those present the outlined sales area. Mr. Walker reported that this was the proposed area for the federal license.

• • • • • • •

Upon Mr. Marcey's arrival, Mr. Agnew explained the foregoing happenings of the meeting and asked Mr. Marcey his opinion of the milk regulations.

Mr. Marcey: "We go along with the Maryland and Virginia Milk Producers' Association. We buy all of our milk from the Association."

Mr. Agnew: "Are you able to adhere to set price or do you have to meet competition?"

Mr. Marcey: "We have to meet competition. Our lowest price is 10¢, we try, however, to maintain 13¢ per quart for 4% milk."

• • • • • • •

Prices of Milk

Discussion of the milk prices to be set up followed. Mr. Davison reported that they paid the same price for milk as they did for cream (milk going into cream).

[fol. 38] Mr. Agnew asked if there were any objections to the price scale which had been submitted to the Commission. There were no objections, except from Mr. Hazel, who opposed generally.

Mr. Davison brought up the question of butterfat content of the proposed schedule, and stated that he believed that there should be a butterfat limit of 3.9-4.2% on one grade of milk.

Roundtable discussion pro and con the butterfat limit followed. Mr. Agnew cited Lynchburg as an example of having the high and low butterfat differential. He stated that milk testing higher is worth more, and this fact has proven to be profitable in the city of Lynchburg.

Mr. Hazel argued that the small distributor would be hurt in that he could not compete with the large distributors if he had to sell high test milk at a higher price.

Mr. Flagelson remarked that about 85% of the producers made milk testing from 3.5% to 4.0% butterfat.

Mr. F. Walker reported that the producers were putting Jersey and Guernsey cows into their herds to raise the butterfat test which had increased the test of milk received at the Association considerably.

Mr. Davison: "If I were a producer-distributor and wanted to beat this proposed order, I think I could very effectively go out and produce high test milk and sell it."

Mr. Agnew: "Do you think the differential should be 2¢ or 1¢?"

Mr. Burchell: "I think on quarts it should be 2¢ on anything over 4.2%.

There seemed to be a majority opinion among distributors that there should be a 2¢ differential between high and low test milk.

[fol. 39] Bottle Deposit

It was decided to postpone any provisions for a bottle deposit, as a bill was before legislature now which would make the bottle deposit useless. Judge Snow explained that the proposed bill would give police power in the state to prohibit anyone from using bottles which did not have his name on it.

Local Board Organization

Local board set up was explained by Mr. Agnew. He suggested that the distributors elect their representatives and the producers elect theirs, and each group submit about three names to the Commission for chairman of the local board in order of their preference.

In conclusion, Mr. Agnew stated that after the first of March the Commission would be glad to meet with any group who wished to make recommendations or suggestions relative to milk regulations, and would give them as much time as possible.

The meeting adjourned.

——— ———, Chairman. ——— ———, Secretary.

[fol. 40] EXHIBIT "C" TO COMPLAINT

COMMONWEALTH OF VIRGINIA:

State Milk Commission, Richmond

Rules and Regulations for the Supervision and Control of the Arlington-Alexandria Milk Market

Effective 12:01 a. m. April 1, 1936, and posted in the main office of the Commission and a certified copy filed in the office of the Commissioner of Agriculture in Richmond, Virginia.

Definitions

As used in the rules and regulations, unless otherwise stated, and unless the subject clearly indicates otherwise.

"Commission", "Distributor", "Producer", "Producer-distributor", "Consumer", "Licensee", "Milk", "Subsidiary", "Affiliate", "Boards", "Books", "Records", "Health Authorities", and "Sanitary Regulations", are clearly defined in the Milk and Cream Act, chapter 357, Acts of the Assembly, session 1934.

"Milk" means milk so designated by law, including ordinances applicable in the city of Alexandria.

"New Producer" means one who secures a permit from the Health Department, as required on this market, and has also secured permission from the Local Board to sell milk within the sales area after the efefective date of these regulations.

"Delivery Period" means the calendar month.

"Basic Allotment" means the established quantity of milk or base set up by the Local Board for each producer on an equitable basis with all other producers for apportioning Class I sales among the producers. The board shall determine the period for fixing allotments which will be based on quantities sold during any given period.

"Basic Quantity" means the quantity of milk or cream each producer receives in Class I as determined by dividing the total sales of Class I by the total allotments and then applying this percentage to each allotment.

"Arlington-Alexandria Sales Area" means the territory included within the following boundaries:

Beginning at the junction of the western boundary of the Arlington County line and the Potomac River, thence southwesterly along said county line to the corporate limits of Falls Church, continuing around the western boundary of the corporate limits of Falls Church to Highway 211. Thence northeasterly along Highway 211 to Highway 7. Thence southeasterly along Highway 7 to Highway 244. Thence southwesterly along 244 to Road 613. Thence [fol. 41] southeasterly and southwesterly along Road 613 to Road 644. Thence southwesterly along Road 644 to Road 635. Thence southeasterly along Road 635 to Road 611. Thence northeasterly along Road 611 to Road 633. Thence northeasterly along Road 633 to Road 628. Thence along Road 628 in a southerly and easterly direction to Road 626. Thence northeasterly along Road 626 to Road 629. Thence southerly along Road 629 to Road 626, thence easterly along Road 626 to Highway 235. Thence easterly in a straight line to the Potomac River. Thence northerly and westerly along the Virginia side of the Potomac River to the western boundary of the Arlington County line, the point of beginning.

"Arlington-Alexandria Production Area" means the territory included within the following boundaries:

Beginning at the junction of the Stafford and Prince William County line at the Potomac River. Thence northwesterly along said line to Highway 1. Thence southerly along Highway 1 to Highway 3. Thence westerly along Highway 3 to Highway 20. Thence westerly along Highway 20 to Highway 49. Thence southerly along Highway 49 to North Anna River. Thence westerly along said river to Highway 4. Thence northwesterly along Highway 4 to Highway 29. Thence northerly along Highway 29 to Highway 16. Thence northerly along said highway to Highway 211. Thence northeasterly along said highway to Highway 3. Thence northerly along said highway to county line of Warren and Rappahannock. Thence northeasterly along said line to the Warren and Fauquier County line. Thence in same direction to Clarke-Fauquier County line. Thence

in the same direction along said line to the Clarke-Loudoun County line. Thence northeasterly along said line to the intersection of the West Virginia and Virginia state line. Thence northerly along said state line to the Potomac River. Thence down the Potomac River to the junction of the Stafford and Prince William County line, the point of beginning.

Provided, however, that those farms outside such boundaries from which on the effective date of the regulations milk is marketed for distribution as fluid milk in the sales area shall not be excluded from the production area.

Regulation No. 1

Minimum Prices to be Paid Producers for Milk

A. Distributors shall pay producers, on or before the fifteenth day of each month following the close of each delivery period, the following prices for milk delivered in the Arlington-Alexandria Sales Area. All distributors shall pay the producers a differential, in addition to the schedule of prices set forth below for Class I Milk; they shall pay the producers an additional 6¢ per hundred pounds for each 1/10 of 1% above 4%, and shall deduct 6¢ per hundred pounds for each 1/10 of 1% below 4%.

[fol. 42]

Class I Milk	$3.08 per cwt. for 4% milk.
Class II Milk	The average price of 92 score butter in New York, for the current delivery period, as reported by the U. S. Dept. of Agri., multiplied by the per cent. of butterfat in the milk, plus 35¢ per cwt.

Class I Milk shall include all milk as follows:

(a) All milk for consumption or use sold by distributors in bulk or in bottles.

(b) All cream for consumption or use sold by distributors in bulk or in bottles.

(c) All cultured wholemilk for consumption or use sold by distributors in bulk or in bottles.

(d) All milk or cream used in chocolate milk.

(e) All milk or cream used in cottage cheese.

Class II Milk shall include all milk as follows:

(a) All milk used for manufacturing purposes.

B. The butterfat content of all milk delivered by each producer shall be determined by three or more tests made at approximately equal intervals during a delivery period. All testing for the butterfat content of milk and cream shall be made by the Babcock test and shall be subjected at all times to check tests made by a qualified representative of the Local Board.

C. A distributor shall not use in Class II, milk that can be used or disposed of in Class I. And no Class I or Class II milk can be purchased, brought in, or handled by distributors so long as local producers supply the demand for Classes I and II milk for this market.

Regulation No. 2

Confidential Report to the Milk Board Chairman

Each licensee in the Arlington-Alexandria Sales Area shall file with the chairman of the Arlington-Alexandria Milk Board on forms furnished by the board, on or before the tenth day of each month following the close of each delivery period, a report showing the following information for that period. This report shall be kept confidential and shall only be examined by the Local Board chairman or a person authorized by the chairman, and the Commission or its authorized employee:

[fol. 43] (a) The total weight of milk and/or cream received from each producer delivered to said distributor.

(b) The average butterfat test for each producer delivering milk and/or cream.

(c) The total weight and butterfat test of milk and/or cream purchased from other distributors.

(d) The total weight and average butterfat test that is sold in the following classifications: (1) Class I Milk (2) Class II Milk (3) Cultured wholemilk (4) Chocolate Milk (5) 18-22% cream and (6) 38-42% cream.

(e) Total weight and butterfat test of milk and/or cream sold to other distributors.

(f) The price per hundred paid for milk and/or cream from other distributors.

(g) The price per hundred received for milk and/or cream from other distributors.

Regulation No. 3

Farm Basic Allotments

A. Each distributor in the Arlington-Alexandria Sales Area shall file with the Local Board within ten days after being licensed to handle milk by the State Milk Commission, the basic allotment of each producer delivering milk to him. These allotments may be set up in their entirety or may be revised within the discretion of the Local Board. Basic allotments must be at all times set up and be on an equitable basis among all producers. The allotments of all producers shall be set up and made to include Class I Milk.

B. No distributor shall take on a new producer without the consent of the Local Milk Board.

C. Producers shall at all times deliver to their distributors all milk produced by them, except such milk as may be needed for home consumption, and no producer shall have a basic allotment in more than one market or with more than one distributor on that market.

D. A new producer shall receive for his total deliveries, during his first four full delivery periods, Class II price for his milk. After that time his basic allotment shall be set up by the Milk Board on a basis equitable with the other producers.

E. Any producer who fails to deliver his basic quantity during the months of October, November, and December, shall have his basic allotment lowered by the Milk Board. The Board, however, shall have the authority to waive this requirement for sufficient cause of an emergency character.

F. A renter or tenant who is a producer may retain his allotment in the event he moves from one farm to another, provided he is the owner of the entire herd.

G. Application for the transfer of basic allotments must be accompanied by evidence showing a bona fide sale of

the real estate which was used in the production of milk under the basic allotment in question.

[fol. 44] Regulation No. 4

Retail and Wholesale Selling Prices

The following schedule of minimum prices shall prevail in the Arlington-Alexandria Sales Area:

	Retail	Wholesale
(a) Milk 3.25-4.1% butterfat:		
Gallons—bulk	...	38¢
Quarts	13¢	11
Pints	7	6
Half-pints	5	3
(b) Milk 4.11-5.25% butterfat:		
Gallons—bulk	...	43¢
Quarts	15¢	13
Pints	8	7
Half-pints	5½	4
(c) Cultured Wholemilk:		
Gallons—bulk	...	38¢
Quarts	13¢	11
Pints	7	6
Half-pints	5	3
(d) Chocolate Milk:		
Gallons—bulk	...	38¢
Quarts	13¢	11
Pints	7	6
Half-pints	5	3
(e) Cream 18-22% butterfat (sweet or sour):		
Gallons—bulk	...	$1.50
Quarts	55¢	45
Pints	32	28
Half-pints	17	15
Gills	10	9
(f) Cream 38-42% butterfat (sweet or sour):		
Gallons—bulk	...	$2.75
Quarts	$1.10	85
Pints	60	50
Half-pints	34	30
Gills	20	18

[fol. 45] Regulation No. 5

Rules of Fair Practice

Each distributor in the Arlington-Alexandria Sales Area shall observe the following rules of fair practice:

A. The sale of articles under Regulation No. 4 shall be in containers or bottles of the size specified, and no milk and/or cream can be sold in excess of or below the butterfat content as is provided in paragraphs (a), (b), (e), and (f) of Regulation No. 4.

B. All prices listed in the retail price schedule shall apply on sales to consumers from wagons and stores.

C. The prices listed in the wholesale price schedule shall apply only on sales to hotels, restaurants, stores, hospitals, schools, licensed boarding houses, and other establishments having a merchant's license, where milk is resold for consumption whether on or off of the premises.

D. No distributor shall exchange new milk for milk previously sold or shall at any time take back milk from a store or any other place that buys milk for retail sale. All milk delivered by a distributor to a purchaser must be accounted for in the Class in which it is sold in the report of the distributor to the Local Board.

E. Nothing in this regulation shall be construed to prohibit a distributor from submitting bids asked for by any governing body of any municipality, county, state, or federal government, including relief agencies, charitable institutions, or any other agency entirely supported by the above mentioned governing bodies. Provided, however, that all such bids must reflect the cost plus a reasonable handling charge as set up under the regulations governing any particular sales area in which such institutions may be operating.

F. No distributor, his officer, employees, or agents, shall engage in any method or device whereby any article is sold or offered for sale at a price less than the price set up under Regulation 4, whether by discount, rebate, redeemable certificates, stamps, free service, merchandise, loans, installation of equipment, or combined price for such milk together with another commodity sold or offered for sale, credit

beyond the usual course of business, or any other valuable consideration.

Regulation No. 6

Assessments by the Milk Board

Each distributor shall pay to the Milk Board all assessments levied on him by the Milk Board, (except on that milk which has been purchased from licensed distributors), and shall deduct and pay to the Milk Board all assessments levied by the Board on each producer delivering milk to him. No assessment on producers shall exceed 2¢ per hundred pounds of milk, and no assessment on distributors shall exceed 2¢ per hundred pounds of milk. 1¢ per hundred pounds shall be levied and collected by the Milk Board on all milk received by a distributor and 1¢ per hundred on all milk sold or used by a distributor. Such assessment shall be collected on the fifteenth day of each month following the previous delivery period, and delivered to the secretary of the State Milk Commission for deposit to the account of the State of Virginia.

[fol. 46] In regard to milk sold by one distributor to another, commonly called "exchange milk", the first distributor shall be responsible for all assessments.

Regulation No. 7

As provided in Section 5, Acts of the Assembly, session 1934, Chapter 357; All distributors shall make application to the Milk Commission, for a license to operate as a distributor, by mail or otherwise within five days after the provisions of this Act become effective in a market. And as to any distributor thereafter beginning business, application shall be made to the Commission before engaging in such business.

State Milk Commission, J. S. Agnew, Chairman.

[fol. 47] In United States District Court

Motion for Temporary Restraining Order—Filed June 8, 1936

Come now the plaintiffs in the above entitled cause by leave of Court reserved them by the order entered herein on May 29, 1936, and upon their verified bill of complaint

heretofore duly filed herein and the affidavit and exhibits therewith and upon this petition and the affidavit and exhibits filed herewith, renew their motion pursuant to Section 380 United States Code Annotated (Judicial Code, Section 266, amended) for the issuance of temporary restraining order upon the grounds and in the manner set forth in said bill of complaint, to prevent immediate great and irreparable injury, loss and damage which would otherwise result to the plaintiffs before the hearing and determination of the application for an interlocutory injunction herein may be had or notice thereof be served, particularly because of the facts and circumstances set forth in said bill of complaint, and certain facts and circumstances which have occurred since the filing of said bill of complaint and which more fully appear in the affidavit which is filed herewith, to-wit:

1. That the rules and regulations for the supervision and control of the Arlington-Alexandria Milk Market, as made and adopted by the Milk Commission of the Commonwealth of Virginia, said rules and regulations being filed as an exhibit with the verified bill of complaint heretofore filed, became effective at 12:01 A. M., Monday, June 1, 1936.

2. That on June 1, 1936 the said Milk Commission demanded of the manager of one of the stores of the plaintiff, Luther W. High, at No. 1111 King Street, Alexandria, Virginia, that application be made to said Commission for a [fol. 48] distributor's license.

3. That on June 6, 1936, T. Justin Moore, Esquire, solicitor for the plaintiffs herein, received a letter from Edwin H. Gibson, Esquire, Assistant Attorney General of the Commonwealth of Virginia, with which was enclosed a copy of the bill of complaint and proposed decree to be presented in the Law and Equity Court, Part Two, of the City of Richmond, on Monday, June 8, 1936, at 2:30 P. M., copy of which bill and decree are attached to the affidavit filed herewith. That in said bill said Milk Commission seeks to enjoin the plaintiff, Luther W. High, or the managers of each of his four stores in the Arlington-Alexandria Milk Market area, from selling milk in said area at less than thirteen cents per quart retail, the minimum price fixed by said Milk Commission as provided in the rules and regulations of said Commission adopted for said area on March 27,

1936, and which became effective 12:01 A. M., Monday, June 1, 1936.

4. That the prices so fixed and sought to be enforced by the injunction proceedings aforesaid were fixed pursuant to a hearing held at the offices of the said Commission in the City of Richmond on February 20, 1936, at which said hearing there was no sufficient, adequate or bona fide public hearing and investigation held by said Commission to guide it in determining the reasonableness of prices and particularly the retail prices of milk, in that no inquiry was held as to the cost of production and distribution, including compliance with all sanitary regulations then and there in force, nor of necessary operation, processing, storage and delivery charges, the prices of other foods and the welfare of the general public. That the said hearing failed to comply with the provisions of Section 3, subdivision (i) of the Act of the General Assembly of Virginia of March 29, 1934, known as the "Milk and Cream Act", was insufficient and inadequate and in disregard of said provisions of said Act [fol. 49] in that the said Commission failed wholly to determine as a condition precedent to the fixing of minimum and maximum wholesale and retail prices to be charged for milk in Arlington-Alexandria Milk Market, and to the exercise of the other powers of said Commission in said market that the exercise of such powers would be to the public interest. That the insufficiency and inadequacy of said hearing and the failure of said Commission to comply with the provisions aforesaid in the conduct of said hearing appear fully from the minutes of said meeting of February 20, 1936, filed as an exhibit with the verified bill of complaint heretofore filed herein.

5. That the plaintiffs are now subject to the penal provisions provided for by said Milk and Cream Act in that the business of the plaintiff, Luther W. High, involved transactions daily at each of the said four stores by approximately eight employees and so long as said plaintiff shall not obtain a license and shall continue to sell milk at ten cents per quart retail in said area and to purchase milk in said area at eight cents per quart wholesale from the plaintiff corporation, as averred in the affidavit filed herewith, such transactions render said plaintiff and his employees liable to prosecution for each and every day's viola-

tion of the rules and regulations of said Commission and render them subject to a fine of not less than $25 nor more than $100, or to imprisonment for not less than thirty days nor more than one year, or to both fine and imprisonment for each and every such violation.

That, so long as plaintiff corporation sells milk to the plaintiff, Luther W. High, for sale within the Commonwealth of Virginia, at said prices, and without obtaining a license, said plaintiff corporation is so rendered liable to fines, and its officers, agents and employees to fines and imprisonment.

[fol. 50] Respectfully submitted, Highland Farms Dairy, Incorporated, Luther W. High, by (Sgd.) Hunton, Williams, Anderson, Gay & Moore, Philip Rosenfeld, Counsel.

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FILLING AMENDED BILL OF COMPLAINT, ETC.—Entered and Filed July 8, 1936

This day came the plaintiffs, by their solicitors, and moved this Court for leave to file their amended verified Bill of Complaint with exhibits thereto annexed, which, with the consent of the defendants, is accordingly this day filed by leave of Court.

It appearing from the verified amended Bill of Complaint and exhibits thereto annexed herein that this is a proceeding involving an application for a temporary restraining order and an interlocutory and permanent injunction enjoining and restraining the defendants, all of whom are officers of the Commonwealth of Virginia, from enforcing against the plaintiffs the provisions of Chapter 357 of the Acts of the General Assembly of Virginia, Session 1934, and the rules and regulations adopted by the defendants as the State Milk Commission and promulgated to become effective on June 1, 1936 in the Arlington-Alexandria Sales Area, upon the grounds, that the enforcement of provisions of said Act and rules and regulations will deprive the plaintiffs of their property without due process of law and deny

to the plaintiffs the equal protection of the laws in violation of their rights under the Fourteenth Amendment of the Constitution; and that the said Act and rules and regulations are in violation of the Fourteenth Amendment in that, neither under said Act nor under other statutory provisions [fol. 52] in Virginia, nor under said rules and regulations, is there adequate provision for a judicial review; and that said Act and the rules and regulations adopted pursuant thereto will constitute an interference with and a burden upon interstate commerce and thereby contravene the provisions of the Constitution of the United States Article I, Section 8; and that under Section 266 of the Judicial Code, as amended, (28 USCA Section 380) the hearing and determination of said application is directed to be had before a court consisting of three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge, Now, Therefore, it is ordered that the following judges be called to my assistance to hear and determine said application, to-wit:

United States Circuit Judge Morris A. Soper, and United States District Judge Luther B. Way,

And it is further ordered that the application for said interlocutory injunction be, and it hereby is, set by consent of the parties for hearing on the 30th day of July, 1936, at 10 o'clock A. M., in the Court Room of the United States District Court at Alexandria;

It is further ordered that a copy of this order be served on the defendants, and that notice of the hearing as aforesaid be given respectively to the Governor and to the Attorney General of the Commonwealth of Virginia.

(Sgd.) Robert N. Pollard, United States District Judge.

July 8, 1936.

[fol. 53] IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed July 22, 1936

It is hereby stipulated by and between the attorneys for the respective parties herein that there be submitted to the Court the application of the plaintiffs for an interlocutory and final injunction as prayed in their amended bill of

complaint and the answer and motion of the defendants to dismiss the bill. For the purposes of this submission the following facts are submitted with the intention that they have the same effect as though proven upon a trial and uncontradicted:

(1) The plaintiff, Highland Farms Dairy, Incorporated, is a domestic corporation of the Commonwealth of Virginia and a resident of the City of Washington, in the District of Columbia.

(2) The plaintiff, Luther W. High, is a citizen of the United States and a resident of the District of Columbia.

(3) The defendant, J. S. Agnew, is Chairman, and defendants, Kone Brugh and T. R. Snavely are members of the Milk Commission of the Commonwealth of Virginia and are residents of said Commonwealth.

(4) The amount in controversy in this suit exceeds the sum of Three Thousand Dollars ($3,000.) exclusive of interest and costs.

(5) The plaintiff, Highland Farms Dairy, Incorporated, is engaged and at all times hereinafter mentioned and since July 1, 1935, was continuously engaged in the business of operating a creamery for the pasteurizing and processing of milk at Washington, in the District of Columbia, and for such purpose purchases milk, chiefly in can lots, under direct contracts from farmers or producers in the District of Columbia, State of Maryland and the Commonwealth of Virginia for delivery of said milk to its creamery in the City of Washington. The transportation and delivery of said milk to the plaintiff in said City is performed by the farmers or [fol. 54] producers and at their cost. The said plaintiff corporation purchases approximately 575,228 pounds of milk monthly from the farmers or producers as aforesaid, and of said total amount of milk so purchased monthly, approximately 112,449 pounds, being 19½% of the total purchased, was purchased from farmers or producers who are in the Commonwealth of Virginia. Substantially all of the milk so purchased in the Commonwealth of Virginia has been, is and will continue to be produced in the Arlington-Alexandria Production Area, hereinafter referred to.

(6) In the routine procedure at the creamery of the plaintiff corporation, all milk is treated as a whole unit, without regard to the source of its supply, in that all milk, irrespective of from where it came, is poured into receiving tanks and from there pumped through a cooler into holding vats, and after pasteurizing and processing, is bottled; as a result thereof, milk received from farmers and producers, in the Commonwealth of Virginia, is commingled with milk received from farmers and producers in the District of Columbia and in the State of Maryland.

(7) The entire output of milk so bottled by the plaintiff corporation is sold to the plaintiff, Luther W. High, to be resold at retail by said plaintiff, Luther W. High, in the City of Washington, District of Columbia, State of Maryland, and in the Commonwealth of Virginia, as will more fully hereinafter appear; that because of the commingling of milk at said creamery, it is impossible for any person to determine what portion, if any, of the milk delivered to the plaintiff, Luther W. High, for retail sale in the Commonwealth of Virginia, was produced in or purchased by plaintiff corporation, in the Commonwealth of Virginia.

(8) The plaintiff corporation sells said milk to the plaintiff, Luther W. High, as aforesaid, in units and at wholesale prices, as follows:

[fol. 55]

Milk, 4% butterfat	8¢ per quart.
Cultured wholemilk	6¢ per quart.
Chocolate milk	4¢ per pint.
Cream 20% butterfat	20¢ per pint.
	11¢ per half pint.
Cream 40% butterfat	30¢ per pint.
	15¢ per half pint.

(9) The plaintiff Highland Farms Dairy, Incorporated, has obtained all licenses and permits required by the sanitary laws and regulations effective in the City of Washington, District of Columbia, the State of Maryland and the Commonwealth of Virginia, for the lawful conduct of its said business and it has duly kept, observed and performed all of the provisions of each of said sanitary laws and regulations of the Commonwealth of Virginia, for the lawful conduct of its said business.

(10) The plaintiff, Luther W. High, is engaged and at all times hereinafter mentioned has been engaged in the business of operating retail stores for the sale of ice cream, milk and certain other dairy products in and about the City of Washington, in the District of Columbia, the State of Maryland and the Commonwealth of Virginia, and in the course and conduct thereof engages in the business of handling and selling bottled milk in and about the Arlington-Alexandria sales area, as hereinafter referred to, in the Commonwealth of Virginia, and has invested in said business in Virginia a sum in excess of $30,000., of which sum an amount in excess of $4800. is invested in the places of business operated by the plaintiff, Luther W. High, in said Arlington-Alexandria Sales Area. The said plaintiff, Luther W. High, purchases in the District of Columbia, under contracts, all of the output of bottled milk of the said plaintiff, Highland Farms Dairy, Incorporated, The said plaintiff, Luther W. High, does not purchase from producers or distributors within the Commonwealth of Virginia any milk for resale, but purchases solely and entirely from the plaintiff corporation all of the bottled milk which is sold in his stores as aforesaid. The orders for the said bottled milk are telephoned daily and directly from the [fol. 56] several stores operated in the said Arlington-Alexandria Sales Area to the dairy of Highland Farms Dairy, Incorporated, in the City of Washington, District of Columbia, and such sales are made to the plaintiff, Luther W. High, in the City of Washington, and the delivery of said bottled milk to the said stores is made directly and in the trucks of Highland Farms Dairy, Incorporated.

(11) The plaintiff, Luther W. High, sells approximately 3,460 gallons of milk monthly in the Arlington-Alexandria Area in the Commonwealth of Virginia to the general public at retail in units and at prices, as follows:

Milk, 4% butterfat	10¢ per quart.
Cultured wholemilk	8¢ per quart.
Chocolate Milk	5¢ per pint.
Cream 20% butterfat	25¢ per pint.
	13¢ per half pint.
Cream 40% butterfat	35¢ per pint.
	18¢ per half pint.

The said plaintiff has built up a large and lucrative business in the retail sale of milk in bottles to consumers amounting in gross to over $20,000 annually by maintenance of the aforesaid units and prices. The said plaintiff, operating upon the familiar "cash and carry" plan, maintains its level of prices in the Arlington-Alexandria Area by the observance of the following practice:

No deliveries are made to purchasers outside of or away from the plaintiff's several stores; immediate payment is required from purchasers; and a deposit is required for the return of the bottle in which the purchased milk is contained.

A differential in the prices of the commodities and units sold by the plaintiff at retail and the prices for similar grade commodities and units sold by other distributors in said area who permit charge accounts and furnish delivery service is an essential factor in the plaintiffs' method of competition between the plaintiffs' business and the business of such other distributors.

[fol. 57] (12) The plaintiff, Luther W. High, has obtained all licenses and permits required by the sanitary laws and regulations effective in the Commonwealth of Virginia and each city or county therein wherein he conducts his business for the lawful conduct of his said business and he has kept, observed and performed all of the provisions of said sanitary laws and regulations.

(13) J. S. Agnew and Kone Brugh, members of the Commission, are, and have been for a number of years, producers of fluid milk, but neither of them sells his products in the Arlington-Alexandria milk market area, nor is either a member of the Maryland-Virginia Milk Producers' Association. T. R. Snavely, who is also a member of the Commission, is chairman of the Department of Economics of the University of Virginia, and is neither a producer nor a distributor of milk, but is a consumer and a customer of milk distributors.

(14) The enactment and language of Chapter 357 of the Acts of 1934 of the General Assembly of Virginia, filed as Exhibit A annexed to the plaintiffs' amended bill of complaint are stipulated. It is further stipulated that no legis-

lative investigation into the condition of the Milk Industry of Virginia was made or conducted by or at the instance of the General Assembly of Virginia as the basis for the enactment of the said chapter.

Previously, on February 19, 1934, a Bill (H. B. 335), providing for the supervision, regulation and control of the production, manufacture, transportation, storage, distribution and sale of milk and cream in Virginia, and the creation of a Milk Commission to administer said Act, substantially similar in purpose to Chapter 357 aforesaid, but differing materially therefrom with respect to the powers conferred on the Milk Commission and the manner of regulation provided for, was introduced in the House of Delegates of the General Assembly of Virginia, and on that day referred to the Committee on Agriculture and Mining. The [fol. 58] record of that Committee shows that the only action of that Committee was to pass by indefinitely this bill on February 25, 1934, thirteen of the seventeen members of the Committee being present. Said bill was reported out from said Committee on February 27, 1934, and, upon submission thereafter, to the vote of the House, was rejected on March 5, 1934.

The bill (House Bill No. 396) which was enacted as Chapter 357 of the Acts of 1934 was introduced in the House of Delegates, accompanied by a letter from the Governor of Virginia (a copy of which is attached hereto and filed herewith marked Exhibit 3), in the morning of March 10, 1934. Said bill was reported to the Committee on Agriculture and Mining, and said Committee immediately discharged from consideration thereof on that day. Printings and constitutional readings were waived and the bill adopted by the House and sent to the Senate on that morning. The Senate on the same day referred said bill to the Committee on Agriculture and Mining, immediately discharged said Committee from consideration thereof, dispensed with the constitutional readings, and enacted the same in the afternoon of March 10, 1934.

(15) That the meeting held by the State Milk Commission on Thursday, February 20, 1936, at 10 o'clock A. M., in the John Marshall Hotel, Richmond, Virginia, to consider the establishment of the milk market for the Arlington-Alexandria area, was advertised on February 6th and 13th, 1936,

in The Sun, a weekly newspaper published in East Falls Church, Virginia, and on February 6th, 12th and 17th, 1936, in the Alexandria Gazette, a newspaper published in Alexandria, Virginia, both newspapers having a general circulation in the territory embraced in the Arlington-Alexandria Milk Market Area; that knowledge of the meeting to be held was generally given to the producers, distributors and consumers in that area previous to the date of said meeting; that neither of the plaintiffs was present or represented at said meeting; that notice was given at the meeting, as stated in the minutes thereof (copy of which is filed with and annexed to the plaintiffs' amended bill of com- [fol. 59] plaint, marked Exhibit B), that the Commission would be glad to meet with any group who wished to make recommendations or suggestions relative to milk regulations and would give them as much time as possible; that one or more members of the Commission were present at the office of the Commission in the Capitol Building, Richmond, Virginia, for twenty-four days from March 3rd to March 28th, 1936, and that during the interval a number of interested persons appeared and verbally and voluntarily gave ex parte statements and statistics to the Commission relating to the subjects enumerated in paragraph (j), Section 3 of the Milk Act; among those appearing were M. A. Burchell, owner of the Alexandria Dairy Products Company, together with his auditor, who gave certain information covering the cost of distribution of fluid milk from his plant in the proposed Arlington-Alexandria Area; members of the Virginia-Maryland Producers' Association, who submitted a copy of an undated survey made by said Association for the Washington milk shed, copy of which is filed herewith and annexed hereto as Exhibit 4; and Mr. Davis, of the Arlington Dairy, Incorporated, who made certain verbal statements to the Commission as to the cost of distribution of milk by his corporation.

The copy of the minutes of the public hearing for the Arlington-Alexandria Milk Market held in the John Marshall Hotel, Richmond, Virginia, at 10 o'clock A. M., Thursday, February 20, 1936, filed with and annexed to the plaintiffs' amended bill of complaint, market Exhibit B, is stipulated and agreed to be a full, true and correct copy thereof. It is further stipulated and agreed that the letter dated February 19, 1936, addressed to the State Milk Commission

of Virginia by the Maryland-Virginia Milk Producers' Association, Inc., by Frank S. Walker, President, (copy of which is attached to this stipulation and filed herewith, market Exhibit 1), is a full, true and correct copy of the brief presented at the public hearing aforesaid on February 20, 1936, by Mr. Derrick referred to in the minutes aforesaid and recited as filed thereat.

[fol. 60] (16) That the Milk Commission established the Arlington-Alexandria Milk Market and rules and regulations therefor upon the basis of the information obtained by it at the public hearing of February 20, 1936, and also upon the basis of the information voluntarily furnished by interested persons as aforesaid between March 3rd and March 28, 1936, and of the following treatises which the Commission had in its files or received subsequent to the hearing of February 20, 1936, and which were not presented in evidence at said hearing:

"Virginia Farm Economics", a monthly publication of the Department of Economics of Rural Sociology, Virginia Polytechnic Institute, Blacksburg, Virginia; "The Dairy Herd Improvement Association", sponsored by the Virginia Polytechnic Institute, Dairy Extension Department, Blacksburg, Virginia; "Marketing Fluid Milk in Four Virginia Cities", a study of the marketing of milk in the Cities of Newport News, Petersburg, Lynchburg and Bristol, published in 1930 by the Virginia Agricultural Experiment Station, Blacksburg, Virginia; "An Economic Study of Dairy Farming in the Norfolk Milk Shed", a pamphlet published in February, 1935, by the Virginia Polytechnic Institute, Virginia Agricultural Experiment Station, Blacksburg, Virginia; "Prices and Consumption of Milk in Specific Cities as Related to Industrial Payroll and other Industrial Factors", published by the Agricultural Experiment Station, University of Illinois; "Cost of Producing Milk and Dairy Farm Organization in Spokane and Stephens Counties", published by Washington Agricultural Experiment Station, Pullman, Washington; "Farm Profits and Factors Influencing Farm Profits on Ninety-Eight Dairy Farms in Sussex County", published by New Jersey Agricultural Experiment Station, New Brunswick, New Jersey; "Report of Joint Legislative Committee to Investigate the Milk Industry in the State of New York", New York Legislative

Document (1933) 114; "Proceedings of the Middle States Conference of Milk Control", and "Determining a Fair Spread for Distributors."

[fol. 61] (17) The adoption and language of the "Rules and Regulations for the Supervision and Control of the Arlington-Alexandria Milk Market", adopted by the Milk Commission of the Commonwealth of Virginia on March 27, 1936, a full, true and correct copy of which is filed with and annexed to the plaintiffs' amended bill of complaint, marked Exhibit C, are stipulated.

(18) The plaintiffs had knowledge on or about April 1, 1936 of the establishment of the Arlington-Alexandria Milk Market and of the adoption by the defendants of the rules and regulations aforesaid.

(19) The plaintiff, Highland Farms Dairy, Incorporated, has continuously sold bottled milk to the plaintiff, Luther W. High, at prices lower than the minimum established by the rules and regulations adopted by the said Milk Commission for the Arlington-Alexandria Area and the plaintiff, Luther W. High, has continuously sold bottled milk to the general consumer public at prices lower than the minimum established as aforesaid.

(20) No statutory machinery or procedure for judicial review of the actions of the Milk Commission, either in the adoption of rules and regulations or in the granting, supervision, and revocation of licenses, is provided by the laws of Virginia other than in Chapter 357 of the Acts of 1934 of the General Assembly of Virginia. The Supreme Court of Appeals considered and decided questions involving the constitutionality of Chapter 357 of the Acts of 1934 in Reynolds v. Milk Commission, 163 Va. 957, 975, and sustained the constitutionality of said Chapter. The right is reserved to all parties to the present case to refer to the records and briefs in said case.

(21) The defendants in their official capacity have threatened to invoke against the plaintiff, Luther W. High, the remedies by injunction proceedings as provided by the sections of Chapter 357 of the Acts of 1934 of the General Assembly of Virginia, restraining the plaintiff from continuing his business as a milk dealer without first having

obtained the required license and from violating the rules and regulations of the said Commission as to retail sales prices.

[fol. 62] No action has been taken, and the Milk Commission and its counsel disclaim any intention of taking action of any character whatsoever against the Highland Farms Dairy, Incorporated, on account of the conduct of the corporation's business while it is being done as is alleged by that plaintiff in its bill of complaint.

(22) It is stipulated and agreed that the maps and schedules attached hereto filed with and made a part of this stipulation are a true and correct representation of the market areas and of the sale areas therein designated by the said Milk Commission and truly and correctly represented the dates upon which the said markets were designated and established in the Commonwealth of Virginia, since the enactment of Chapter 357 of the Acts of 1934 of the General Assembly of Virginia to the date of this stipulation. The Milk Commission has not established a market for the Richmond production or sales area. Federal authorities, acting under the Agricultural Adjustment Act, undertook to regulate prices by virtue of Federal statutes, now declared unconstitutional, but, a Federal Administrator has continued in the Richmond area, which includes the outlying territory in Chesterfield and Henrico Counties, to whom distributors handling approximately 85% of fluid milk continue to report. All distributors handling approximately 100% of fluid milk distributed in the Richmond area pay to producers for guernsey milk, 5% butterfat, $4.26 per hundred pounds; for all Grade AA milk, 4% butterfat, $3.37 per hundred pounds; for all Grade A milk, 4% butterfat, $2.895 per hundred pounds; that all distributors undertake to maintain a retail price of 15¢ per quart and 9¢ per pint for guernsey milk, of 13¢ per quart and 8¢ per pint for Grade AA milk, and of 12¢ per quart and 7¢ per pint for Grade A milk. Wholesale prices between distributors and the Richmond area are for guernsey milk 14¢ per quart and 8¢ per pint; for Grade AA milk 42¢ per gallon, 12¢ per quart, and 7¢ per pint; and for Grade A milk 39c per gallon, 12¢ per quart and 7¢ per pint.

[fol. 63] There is no established market in the Charlottesville area, but distributors are generally maintaining a re-

tail price of 13¢ per quart for Grade AA, 4% butterfat, fluid milk.

(23) Each party reserves the right to introduce and call for such oral evidence at the hearing as they may desire, subject to objection by the other party as to relevancy or materiality, with respect to the prices paid by the Maryland-Virginia Milk Producers Association, Incorporated, to producers for which said Association markets their milk, and with respect to the prices paid by Highland Farms Dairy to producers from whom said Dairy purchases its milk requirements, and with respect to the cost of operation of said Association and said Highland Farms Dairy.

(24) The foregoing stipulation of facts is intended to present as concisely as possible and in an orderly manner the facts stated in the amended bill of complaint and exhibits therewith filed, the two supporting affidavits verified on May 27, 1936, by Luther W. High, and on June 8, 1936, by Philip Roselfeld, respectively, and the verified joint and separate answer of the defendants, duly verified on the 16th day of June, 1936. Although this stipulation is intended to be complete in itself and not to need amplification from those sources, yet either party may refer to any of the aforesaid sources and each of said papers shall be considered by the Court and shall be given such weight as it is entitled to. Failure to copy into this stipulation any allegation of those sources is not intended to reflect upon their correctness and shall not support an inference that this stipulation is to be narrowly interpreted in any particular. The answer of defendants to the original bill of complaint shall be treated as defendants' answer to the amended bill of complaint.

No conclusions of law are admitted, and the Acts of the General Assembly of Virginia, as well as all adjudicated [fol. 64] cases, may be referred to and submitted for the consideration of the court.

(Sgd.) Hunton, Williams, Anderson, Gay & Moore, Philip Rosenfeld, Solicitors for Plaintiffs. (Sgd.) Edwin H. Gibson, Jno. S. Barbour, Solicitors for Defendants.

[fol. 65] Copy

EXHIBIT 1 TO STIPULATION

February 19, 1936.

State Milk Commission of Virginia, Richmond, Virginia.

GENTLEMEN:

We are making application to your honorable body for assistance in controlling prices to producers in the Alexandria-Fairfax areas. We find that prices ranging from 20¢ per gallon flat for 4% milk to 26½¢ flat and 26¢ plus premiums for Class I and 20¢ for Class 2 are frequent occurrences; all of these prices carry varying butter fat differentials. We also find that certain producer-distributors are selling their milk on the street at prices purported to be from 6¢ per quart to 11¢ per quart. Economic conditions would certainly justify a 13¢ retail price for milk on the streets in this territory when its respective food values and costs of other materials a housewife purchases are taken into consideration. Many articles have had a substantial increase in their sales price. To the present time there has been no increase in the retail price of milk over a period of the last three years and we are asking no increase at this time. However, we think it a distinctly unfair trade practice for individual producers to attempt to sell all of their milk in Class I uses and cut prices on the street to 6¢ and 8¢ per quart.

We therefore make an appeal to you to establish the following prices to producers in this territory:

Where milk is sold by the Maryland and Virginia Milk Producers' Ass'n or other producers to distributors we would ask that the prices be set at 26½¢ per gallon or $3.08 per cwt. for 4% milk, f. o. b. plant with a 6¢ per cwt. butterfat differential on or off from 4 per cent.

The Maryland & Virginia Milk Producers' Ass'n have the privilege as per its full supply contract with distributors to remove excess milk and sell it in manufacturing trade channels where the best possible price could be received. We ask for the privilege of continuing this practice.

Maryland & Virginia Milk Producers' Ass'n, Inc.,
Frank S. Walker, President.

(Here follows 1 photo, Exhibit No. 2 to Stipulation, side folio 66)

STIPULATION - EXHIBIT 2

Markets were created as follows:

(1)	June 15, 1934	Roanoke
(2)	July 1, 1934	Harrisonburg
(3)	July 1, 1934	Danville
(4)	July 22, 1934	Staunton - Waynesboro
(5)	July 26, 1934	Lynchburg
(6)	July 27, 1934	Petersburg- Hopewell
(7)	August 8, 1934	Newport News - Williamsburg
(8)	October 1, 1934	Norfolk - Portsmouth
(9)	June 16, 1935	Fredericksburg
(10)	June 16, 1935	Covington - Clifton Forge
(11)	July 1, 1935	Altavista
(12)	Sept. 9, 1935	Blackstone - Kenbridge - Victoria - Crew
(13)	January 1, 1936	Onancock
(14)	March 1, 1936	Bowling Green - Milford
(15)	April 1, 1936	Arlington - Alexandria
(16)	May 16, 1936	Suffolk

= Production Areas

= Sales Areas (Except where too small to be shown)

Construction and Detour Information

Volume 10 **July, 1936** **No. 7**

Indicates detour necessary.

Indicates work under way, traffic maintained, no detour.

Indicates soil road. Good condition except slippery if wet.

1. Routes 5 and 60 at east limits of Richmond; detour over alternate streets; marked. Route 360 at south limits of Richmond; railroad bridge and fill under construction on regular road; will be muddy and slippery on new fill in wet weather. Route 250 at west limits of Richmond; rebuilding old road one mile; traffic maintained over construction, or can use Three Chopt Road to Short Pump. Route 6 at west limits of Richmond; widening construction; drive carefully and watch for workmen and equipment on the road and barricades on edge of pavement.
2. Short run-around on Williamsburg Bypass where underpass is being built.
3. Bridge construction. Drive slow and watch for workmen and equipment on the road.
4. Bridge washed out. Road closed.
5. Construction on Route 111 on new location except connections of new and old roads. Traffic using regular gravel road.
6. Temporary trestle at railroad crossing in Strasburg. Expect to complete by July 15.
7. Construction on new location except crossings of new and old roads. These places will be rough or a little slippery if wet, but no trouble.
8. Bypass at Warrenton; construction on new location.
9. Construction Oak Grove to Lorty is along old road. Very dusty several miles if dry; muddy and slippery in places if wet. Expect to complete by August 1.
10. Traffic maintained over new soil and short section of surfacing. Good if dry, muddy in places and slippery if wet.
11. Traffic maintained over regular soil road and sections of construction; fair if dry; slippery if wet.
12. Traffic maintained over regular dirt road except where new and old roads cross. Rough but passable.
13. Route 234, Manassas 1½ miles south. Traffic over construction; rough but passable. Watch for workmen.
14. Bluefield 1.7 miles west; construction on new location; no interference. From 5 miles west to 10 miles west of Bluefield; construction beside old road in places; no trouble; slippery places on old pavement if wet.
15. Cumberland Gap to Kentucky Line; traffic maintained over new grade and section of surfacing in places. Expect to complete by July 20.
16. Short section of surfacing; very good condition.
17. Slippery if wet weather, very good if dry; rough short sections.
18. Traffic over construction one-half to one mile; muddy and slippery in wet weather; rough but passable if dry.
19. Construction on new location; none of old road will be torn up during July. Watch for workmen and equipment.
20. Surfacing only; short sections rough or slippery if wet. Drive carefully and watch for workmen on the road.
21. Traffic maintained over short section of construction; very good condition.
22. Street work in town, short section rough or use alternate streets; marked.
23. Traffic over sections of construction and old gravel road; very good if dry; muddy and slippery if wet.
24. Construction not interfering with traffic. Use regular graded road; slippery if wet.
25. Fort Chiswell, 1½ miles east, 300 feet one-way road. Expect to complete by July 15.
26. Wytheville, west. Traffic carried over ½ mile construction; fair condition. Expect to complete by July 20.
27. Between a point 8 miles west of Wytheville and Marion; traffic maintained over old macadam road and sections of construction. One 1,500-foot run-around rough in spots but passable. New grade is slippery in wet weather.
28. Traffic maintained over new graded road and stone surfacing. Very good if dry; muddy if wet.
30. Construction on new location except where new and old roads cross; fair condition in dry weather. Not advisable for through traffic.
31. Traffic maintained over several miles of new graded road and construction. Fair if dry, muddy and slippery if wet; men working in old road; through traffic advised to go by Christiansburg.
32. Concrete widening; present road not disturbed. Watch for workmen and equipment and stay on the pavement.
33. Traffic over short section of construction. Good in dry weather; slippery if wet.
34. Traffic over construction and old dirt road. Fair to good if dry; muddy and slippery if wet.
35. Construction between Elkton and Montevideo and between Montevideo and Harrisonburg along

Virginia Higher Institutions of Learning Accredited by State Board of Education - Richmond, Virginia

Standard Colleges

INSTITUTION	INDEX
Bridgewater College	J-3
Emory and Henry College	D-3
Hampden-Sydney College	K-4
Hollins College	G-4
Lynchburg College	*H-4
Mary Baldwin College	*J-3
Randolph-Macon College	L-3
Randolph-Macon Woman's College	*H-4
Roanoke College	G-4
Sweet Briar College	J-4
University of Richmond	L-4
University of Virginia	*E-3
Virginia Military Institute	*H-3
Virginia Polytechnic Institute	E-4
Virginia State College for Negroes	M-4
Virginia Union University (Colored)	*M-4
Washington and Lee University	*H-3
William and Mary College	*N-4

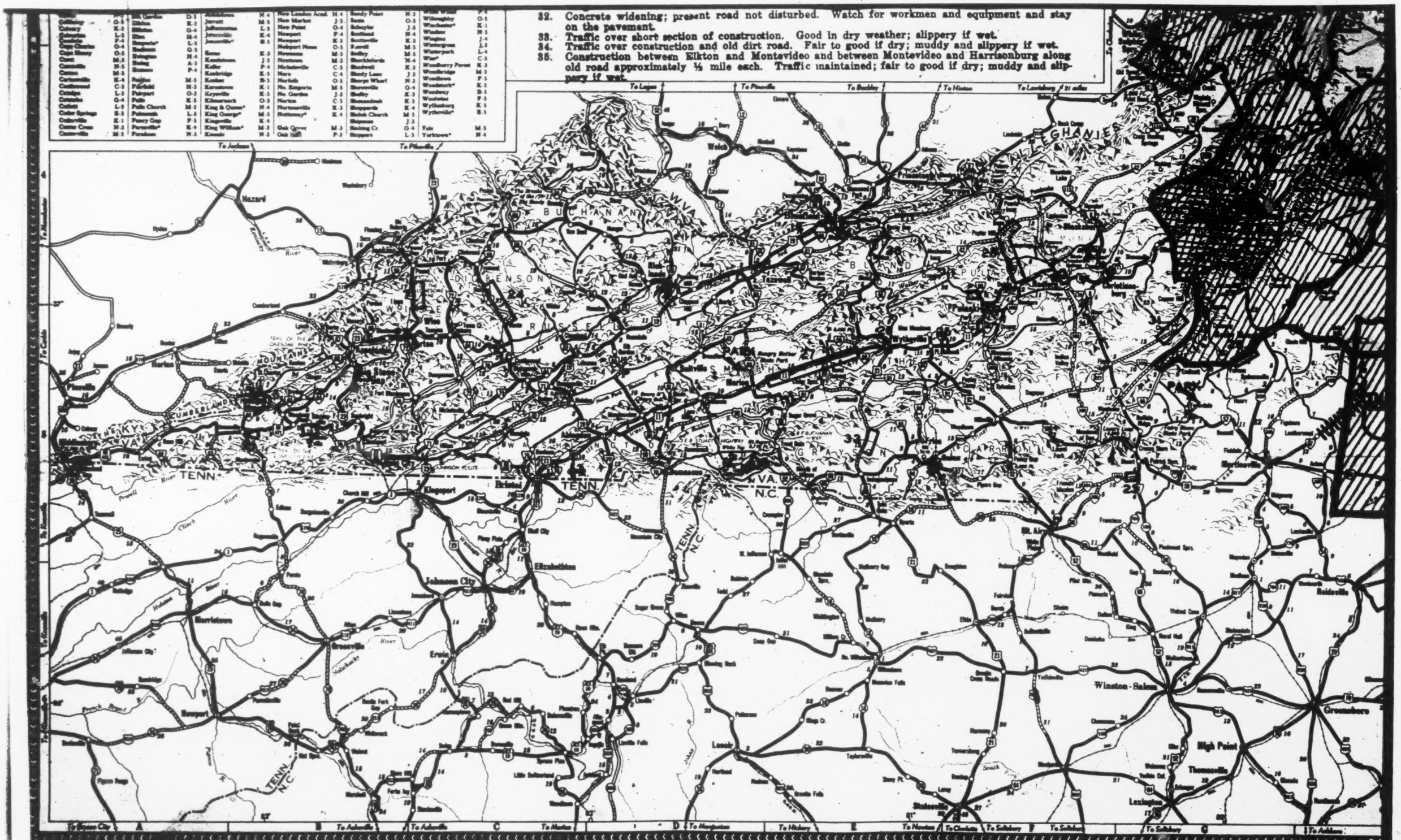
Standard Technical and Professional Colleges

Hampton Institute (Colored)	*O-3
Medical College of Virginia	*M-4
State Teachers College	K-4
State Teachers College	L-3
State Teachers College	*J-3
State Teachers College	K-4

* See City Map on back

To Elkton
To Charlottesville
To Lynchburg
To Farmville
To Petersburg
To Richmond
To Fredericksburg
To Washington
To Alexandria
To Manassas
To Culpeper
To Orange
To Gordonsville
To Louisa
To Staunton
To Harrisonburg
To Winchester
To Front Royal
To Strasburg
To Woodstock
To Edinburg
To Mount Jackson
To New Market
To Luray
To Shenandoah
To Stanley
To Sperryville
To Warrenton
To Culpeper
To Fredericksburg
To Washington
To Alexandria
To Manassas
To Leesburg
To Middleburg
To Upperville

32. Concrete widening; present road not disturbed. Watch for workmen and equipment and stay on the pavement.
33. Traffic over short section of construction. Good in dry weather; slippery if wet.
34. Traffic over construction and old dirt road. Fair to good if dry; muddy and slippery if wet.
35. Construction between Elkton and Montevideo and between Montevideo and Harrisonburg along old road approximately ½ mile each. Traffic maintained; fair to good if dry; muddy and slippery if wet.


To Logan
To Pineville
To Beckley
To Hinton
To Lewisburg 31 miles
To Jackson
To Pikeville
To Hazard
To Hindman
To Cadiz
Hazard
Hyden
Whitesburg
Cumberland
Harlan
Middlesboro
Pineville
Barbourville
London
Corbin
Somerset
Williamsburg
Jellico
Oneida
Huntsville
Kingsport
Bristol
Johnson City
Elizabethton
Erwin
Greeneville
Newport
Sevierville
Knoxville
Maryville
Alcoa
Cleveland
Athens
Chattanooga
Dalton
Rome
Summerville
Trion
Lafayette
Ringgold
Fort Oglethorpe
Chickamauga
Rossville
LaFayette
Trenton
Scottsboro
Guntersville
Albertville
Gadsden
Fort Payne
Boaz
Attalla
Rainsville
Sand Mountain
Lookout Mountain
Cumberland Mountains
Pine Mountain
Black Mountain
Big Stone Gap
Norton
Wise
Appalachia
Clintwood
Grundy
Richlands
Tazewell
Bluefield
Princeton
Welch
Williamson
Logan
Madison
Danville
Boone
Lenoir
Statesville
Mooresville
Salisbury
Concord
Kannapolis
Albemarle
Monroe
Charlotte
Gastonia
Shelby
Rutherfordton
Forest City
Spindale
Asheville
Hendersonville
Brevard
Waynesville
Sylva
Bryson City
Andrews
Murphy
Blue Ridge
Ellijay
Jasper
Canton
Cartersville
Rockmart
Cedartown
Rockingham
Laurinburg
Lumberton
Fayetteville
Sanford
Pittsboro
Siler City
Asheboro
Lexington
Thomasville
High Point
Winston-Salem
Greensboro
Reidsville
Eden
Martinsville
Danville
Chatham
Farmville
Appomattox
Lynchburg
Amherst
Buena Vista
Glasgow
Natural Bridge
Covington
Clifton Forge
Iron Gate
Low Moor
Hot Springs
Warm Springs
Monterey
Staunton
Waynesboro
Harrisonburg
Elkton
Grottoes
Luray
Front Royal
Winchester
Strasburg
Woodstock
Edinburg
Mount Jackson
New Market
Shenandoah
Luray
Page Valley
Stanley
Alma
Timberville
Broadway
Linville
Bridgewater
Dayton
Port Republic
Weyers Cave
Fishersville
Waynesboro
Crozet
Charlottesville
Scottsville
Lovingston
Amherst
Madison Heights
Lynchburg
Appomattox
Farmville
Pamplin City
Hopewell
Petersburg
Richmond
Fredericksburg
Culpeper
Warrenton
Manassas
Alexandria
Arlington
Washington
Leesburg
Purcellville
Middleburg
Upperville
Paris
Berryville
Boyce
Millwood
Clarke
Frederick
Hagerstown
Martinsburg
Shepherdstown
Charles Town
Harpers Ferry
Kearneysville
Ranson
Shepherdstown
Sharpsburg
Boonsboro
Keedysville
Williamsport
Hancock
Cumberland
Frostburg
Oakland
Grantsville
Deep Creek Lake
Accident
Mountain Lake Park
Oakland
Kingwood
Terra Alta
Rowlesburg
Parsons
Davis
Thomas
Elkins
Beverly
Buckhannon
Weston
Clarksburg
Fairmont
Morgantown
Grafton
Philippi
Barbour
Belington
Tygart Valley
Randolph
Pickens
Huttonsville
Mingo
Marlinton
Durbin
Cass
Green Bank
Hillsboro
Lewisburg
White Sulphur Springs
Ronceverte
Alderson
Hinton
Summers
Pipestem

COMMONWEALTH of VIRGINIA
STATE HIGHWAY SYSTEM
and CONNECTIONS

Legend

State Highways

- Hard Surface
- Gravel, Soil, Sand-Clay
- Unimproved
- Ferry
- Railroads
- State Highway Numbers
- Mileages Between Intersections
- Federal Highway Numbers
- National Battlefield & Park Areas

Secondary Roads

Hard Surface — Gravel, Soil, Sand-Clay — Unimproved

Approximate Population of Cities & Towns (1930)

- Over 100,000
- 50,000 to 100,000
- 25,000 to 50,000
- 10,000 to 25,000
- 5,000 to 10,000
- 2,500 to 5,000
- 1,000 to 2,500
- Under 1,000

Over 25,000 in Virginia only, for Population see Back of Map

STATE PARKS

Scale of Miles 0 5 10 20 30 40

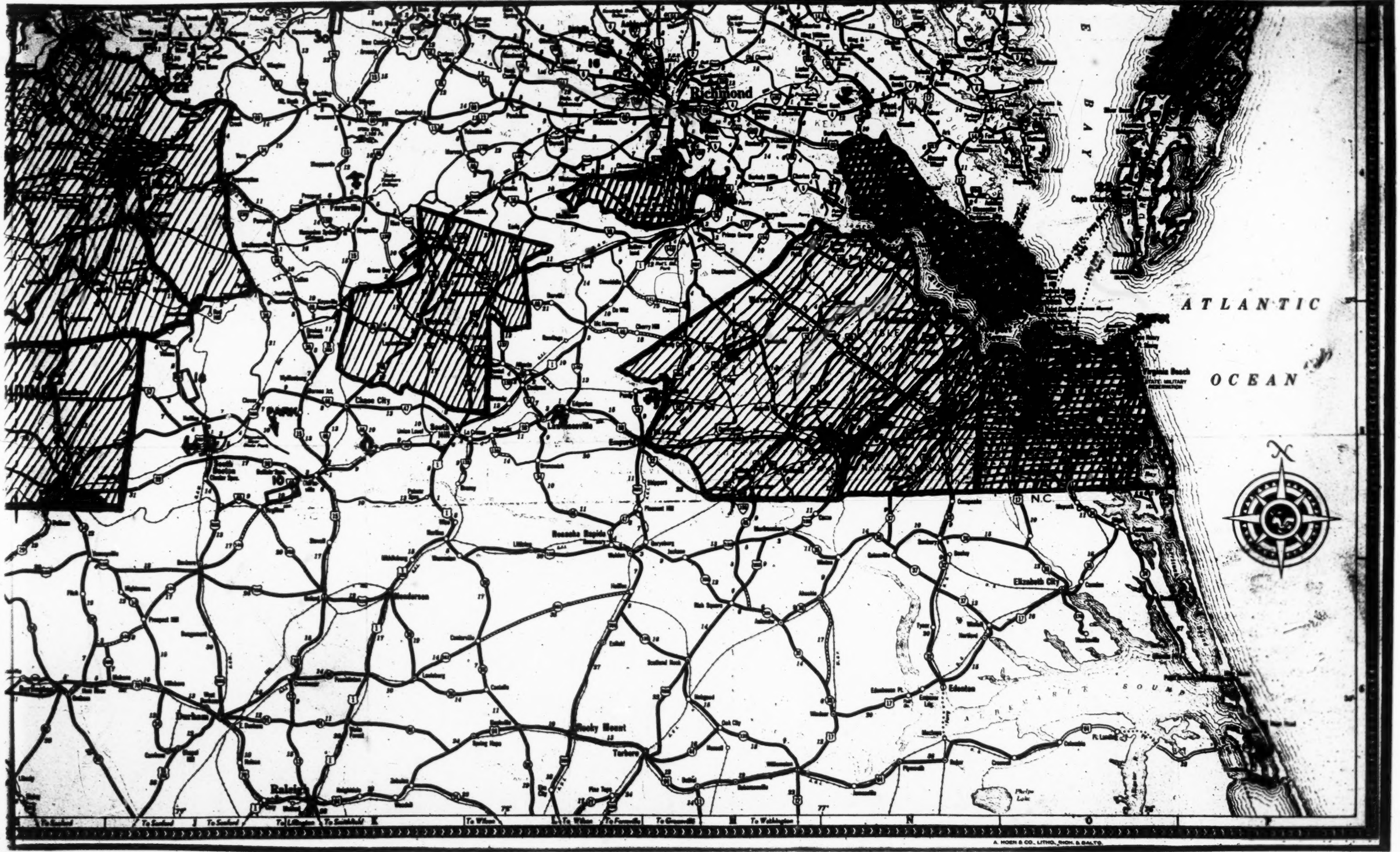
AIRPORTS

COPYRIGHT
COMMONWEALTH of VIRGINIA STATE HIGHWAY COMMISSION

JULY 1936

Base Map made by General Drafting Co., Inc., New York

Hartlesburg
Frederick
Brunswick
Wincheste
Washington
To Annapolis
To Salisbury
To Salisbury
CHESAPEAKE


Richmond
ATLANTIC
OCEAN
N.C.
Elizabeth City
Edenton
Rocky Mount
Tarboro
Raleigh
Chase City
Roanoke Rapids
Virginia Beach
To Suffolk
To Suffolk
To Suffolk
To Wilson
To Wilson
To Greenville
To Washington
A. HOEN & CO., LITHO., RICH. & BALTO.

[fol. 67] EXHIBIT 3 TO STIPULATION

Richmond, March 10, 1934.

To the General Assembly of Virginia:

In an attempt to meet the emergency which now exists in the production and distribution of milk and cream for fluid consumption there has been prepared a bill entitled "A bill to provide for the supervision, regulation and control of the production, processing, transportation, storage, distribution and sale of milk and cream; to create a milk commission and local milk boards and to define and provide for the function, duties and powers thereof; to provide for the appointment, suspension, removal, compensation, costs, and expenses of such commission and boards and members, officers, agents and employees thereof; to provide for licensing processors, bottlers, wholesalers, distributors and retailers of milk and cream, or either; to provide for the raising of funds for the administration of this act and to provide for the disposition of revenue collected hereunder; and to impose penalties for violation of the provisions of this act," which bill I request that you permit to be introduced and considered during your present session.

I understand that similar legislation has been passed in the States of Connecticut, Florida, New Jersey, Ohio, Oregon and Vermont, and that this bill is also similar to the New York Statute, the constitutionality of which has recently been upheld by the Supreme Court of the United States.

George C. Peery, Governor.

[fol. 68] EXHIBIT 4 TO STIPULATION

Milk Production Cost Survey

	Cost	Cents per Gallon	Per Cent
Feeds	$770,387.19	12.32¢	40.91%
Labor	348,290.48	5.57	18.50
Transportation	189,645.84	3.03	10.07
Power, Ice, Boiler	77,310.47	1.24	4.11
Supplies, Painting, etc.	33,038.01	.53	1.76
Veterinary Service	11,409.56	.18	.61
Herd Improvement Association	6,617.96	.11	.35
Taxes	16,401.11	.26	.87
Insurance	15,213.71	.24	.81
Brokerage	60,569.96	.97	3.22
Interest on Investment in Cows	42,033.20	.67	2.23
Depreciation on Cows	105,084.00	1.68	5.58
Interest on Investment (Buildings, Land, and Equipment)	111,527.56	1.79	5.93
Depreciation on Buildings, Equipment	95,699.70	1.52	5.05
Totals	$1,883,223.75	30.11¢	100.00%

Number of Shippers—302.
Number of Cows—8,757.

Md. & Va. Milk Producers' Ass'n., Inc., 1731 Eye Street, N. W., Washington, D. C.

[fol. 69] Explanation of Method Used in Determining the Production Cost of Milk Per Gallon

The attached form was mailed to entire membership (1167). 433 were returned of which 302 were used in computing the cost. Those not used were either not fully or properly filled out. The average production cost was found to be 30.11¢ per gallon for 4% milk. In determining this cost the following method was used:

6% interest on investment.
3% depreciation on buildings.

20% depreciation on equipment (cans, storage tanks, sterilizers, buckets, etc.).

The tax rate was applied against 50% of value given by the producer, as it was found the assessed value was usually about 50% of the total value.

By land is meant the land occupied by stable yard and dairy buildings including fenced off area around the buildings.

An average cow value of $80 was used and the average cow life was figured at five years. At the end of the five years milking period she was valued at $20 leaving $60 to be divided by the five years in determining depreciation. Therefore, $12 per cow was allowed for depreciation in calculating the cost per year.

In determining total production an average per production per cow of 1.971 gallons of 3.971% butterfat was computed by dividing the total production on the market August 1, 1932 to August 1, 1933 plus two gallons per day per shipper (this represents milk used for home use) by the number of cows recorded at the Health Department January 1, 1933.

The average production per cow of 1.971 gallons testing 3.971% is equivalent to 1.9567 gallons per day of 4% milk which was used in indicating total production. The actual amount shipped was 1.895 gallons of 3.971%.

The average percentage of butterfat of 3.971 was determined by taking the twelve months period from August 1, 1932 to August 1, 1933 and calculating the weighted average butterfat content of the milk shipped by 10% of the shippers. This was done by taking every tenth man on the brokerage statements.

The average number of cows per shipper of those returning forms which were used was found to be 29.

[fol. 70] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PHILIP ROSENFELD—Filed June 8, 1936

UNITED STATES OF AMERICA,
Commonwealth of Virginia,
City of Richmond, ss:

Philip Rosenfeld, being duly sworn, on oath deposes and says:

I am an attorney, and counsellor at law, and one of the solicitors for the plaintiffs herein, and have personal knowledge of the matters hereinafter stated, in relation to the above captioned proceedings.

1. Rules and regulations for the supervision and control of the Arlington-Alexandria Milk Market, as made and adopted by the Milk Commission of the Commonwealth of Virginia on March 27, 1936, became effective 12:01 A. M., Monday, June 1, 1936.

2. On June 2, 1936, the plaintiff, Luther W. High, received a letter dated June 1, 1936, from said Milk Commission, addressed to Mrs. C. Powell, as the manager of one of his stores at No. 1111 King Street, Alexandria, Virginia. Enclosed therein was a copy of said rules and regulations and an application blank for a distributor's license; said application blank is hereto attached. Plaintiff was further advised therein that it was "very necessary that you submit this application immediately". No application by either plaintiff herein has been made.

3. On June 6, 1936, T. Justin Moore, Esquire, solicitor for the plaintiffs herein, received a letter from Edwin H. Gibson, Esquire, Assistant Attorney General of the Commonwealth of Virginia, in which was enclosed a copy of a bill of complaint and proposed decree, to be presented in [fol. 71] the Law and Equity Court, Part Two, of the City of Richmond, on Monday, June 8, 1936, at 2:30 P. M. A copy of said bill and decree are hereto attached. In said bill, said Milk Commission seeks to enjoin plaintiff, Luther W. High, and the managers of each of his four stores in the Arlington-Alexandria Milk Market area from selling milk in said area at less than thirteen cents per quart retail, the minimum price fixed by said Milk Commission, as provided in said rules and regulations, notwithstanding that there has been

no sufficient, adequate or bona fide public hearing and investigation held by said Commission to guide said Commission in determining the reasonableness of prices, in that no inquiry was had as to the cost of production and distribution, including compliance with all sanitary regulations then and there in force, necessary operation, processing, storage and delivery charges, the prices of other foods, and the welfare of the general public.

Plaintiff, Luther W. High, purchases milk exclusively from the plaintiff corporation, in interstate commerce, at Washington, D. C., at the price of eight cents per quart, and said milk, resold in the milk market area, as aforesaid, for ten cents per quart retail, is of like high grade and quality as is sold by other dealers and competitors, and as prescribed in said rules and regulations, for said milk market area.

4. The plaintiffs are now subject to the penal provisions as provided in the Milk and Cream Act, (Chapter 357, 1934 Session) in that the business methods of plaintiff, Luther W. High, involve transactions daily at each of the said four stores, by approximately eight employees, and so long as said plaintiff shall not obtain a license and shall continue to sell milk at ten cents per quart retail in said area, and to purchase milk for resale in said area at eight cents per quart, wholesale, from the plaintiff corporation, such transactions render said plaintiff and his employees liable to [fol. 72] fines and imprisonment.

Further, so long as plaintiff corporation sells milk to the plaintiff, Luther W. High, for sale within the Commonwealth of Virginia, at such prices, and without obtaining a license, said plaintiff corporation is so rendered liable to fines, and its officers, agents and employees to fines and imprisonment.

Further deponent saith not.

(Sgd.) Philip Rosenfeld.

Subscribed and sworn to before me this 8th day of June, 1936. (Sgd.) G. A. Miller, Notary Public. (Notarial Seal.)

[fol. 73] APPLICATION FOR DISTRIBUTOR'S LICENSE

——, Virginia,
—— —, 193-.

To the Milk Commission of Virginia:

_____, a corporation chartered under
Name of applicant (s)

the laws of —— (or an individual or individuals) trading as ——, hereby make (s) application, pursuant to the provisions of Chapter 357, Acts of the General Assembly of 1934 for a license to operate as a distributor, as provided in and in accordance with the provisions of the said Act in the —— market. The applicant (s), if an individual or individuals, certify that he (they) paid the State Capitation tax assessed or assessable against him (them) for the year 1935.

The name- and addresses of the officers and directors or other governing body of the applicant are as follows:

_____ _____

_____ _____

_____ _____

_____
Signature (s) applicant (s)

_____
President.

_____
Secretary.

Approved:

_____
Chairman.

[fol. 74]

_____
Address of applicant (s)

_____
City. County.

[fol. 75] VIRGINIA:

IN THE LAW AND EQUITY COURT, PART TWO, OF THE CITY OF RICHMOND

STATE MILK COMMISSION

v.

LUTHER W. HIGH, Trading as High's; K. A. WEBB, (MRS.) E. HOLLIDAY, (MRS.) L. HENDERSON and (MRS.) C. POWELL

BILL

To the Honorable Frank T. Sutton, Jr., Judge:

Your complainant, State Milk Commission (created by the provisions of chapter 357 of the Acts of the General Assembly of 1934, page 558), humbly complaining, showeth unto Your Honor the following case:

1. That said Act gives full authority to complainant in subsection (c) of section 3 "To supervise, regulate, and control the production, transportation, processing, storage, distribution, delivery and sale of milk for consumption within the Commonwealth of Virginia", and in subsection (g) of section 3 "To make, adopt and enforce all rules, regulations and/or orders necessary to carry out the purposes of this act."

That complainant may, as provided in subsection (m) of section 3, "define what shall constitute a natural market area and define and fix the limits of the milkshed or territorial area within which milk shall be produced to supply any such market area; * * *."

Subsection (k) of section 3 provides:

The commission may require all distributors in any market designated by the commission to be licensed by the commission for the purpose of carrying out the provisions of this act. * * * The commission may classify licenses, and may issue licenses to distributors to process or store [fol. 76] or sell milk to a particular city or village or to a particular market or markets within the Commonwealth."

2. Pursuant to the authority vested in the Milk Commission by the General Assembly of Virginia, the Commission, after having given reasonable public notice of the time,

place and purpose of said meetings, held public meetings in its office in the State Capitol Building, Richmond, Virginia, on February 20, 1936, at which public hearings and investigation, and upon evidence then and theretofore taken and investigations theretofore made covering the costs of production and the fair and reasonable, minimum prices payable to producers and like wholesale and retail prices chargeable by distributors, and all interested parties appearing having been heard as to the advisability and necessity of establishing a market for the county of Arlington and the city of Alexandria and of fixing the prices to be paid producers and/or associations of producers or distributors in said market, and the maximum and minimum wholesale and retail prices to be paid and charged for milk in said market, the Commission adopted rules and regulations for the supervision and control of the Arlington-Alexandria milk market, effective 12:01 a. m. Wednesday, April 1, 1936.

On account of the institution of injunction proceedings in the Circuit Court of Fairfax county, the operation of the rules and regulations established for the said Arlington-Alexandria milk market area was temporarily enjoined and restrained, and only became actually effective at 12:01 a. m. Monday, June 1, 1936.

3. Complainant alleges and charges that the defendant, Luther W. High (a non-resident of the State of Virginia), trading as High's, is the owner and operator of four places of business within the Arlington-Alexandria milk market area, in which places of business fluid milk is sold for human consumption; that of the four places of business so owned [fol. 77] and conducted by the said Luther W. High in the said Arlington-Alexandria milk market area, one is located at 1111 King Street in the city of Alexandria, Virginia, of which (Mrs.) C. Powell is manager for said Luther W. High; that another is located at 1207 Mount Vernon Avenue in the city of Alexandria, Virginia, of which (Mrs.) L. Henderson is manager for said Luther W. High; that another is located at 726 King Street in the city of Alexandria, Virginia, of which (Mrs.) E. Holliday is manager for said Luther W. High; and that another is located at 3207 Washington Boulevard in Clarendon, Virginia, of which K. A. Webb is the manager for the said Luther W. High.

Complainant further alleges and charges that the said

Luther W. High, trading as High's, and his employees, the said K. A. Webb, (Mrs.) E. Holliday, (Mrs.) L. Henderson and (Mrs.) C. Powell, managers of the said four places of business so owned and operated by the said Luther W. High in the said Arlington-Alexandria milk market area, have failed and refused to comply with Regulation No. 4 of the rules and regulations adopted by the complainant, the State Milk Commission, regulating and fixing the retail prices of milk sold by them, respectively, in each of the aforesaid places of business in which each is manager, and are continuing to sell milk at retail, for human consumption, at prices below those ascertained, fixed and established for the Arlington-Alexandria milk market area.

The said Luther W. High, trading as High's, and his employees, the said K. A. Webb, (Mrs.) E. Holliday, (Mrs.) L. Henderson and (Mrs.) C. Powell, managers of the said four places of business so owned and operated by the said Luther W. High in the said Arlington-Alexandria milk market area, on June 1, 1936, and at various other times since that date, have sold milk, containing 3.25-4.1% butterfat, in quantities of one quart at and for the price of ten cents per quart, whereas the retail price per quart, chargeable by dis- [fol. 78] tributors to customers for such milk, was fixed by Regulation No. 4, subsection (a) at thirteen cents per quart retail.

For as much, therefore, as the Commission may, without regard to other remedies, apply to Your Honor's court of equity for relief by way of injunction, it prays that Luther W. High, trading as High's; K. A. Webb, (Mrs.) E. Holliday, (Mrs.) L. Henderson and (Mrs.) C. Powell may be made parties defendant to this bill and required to answer the same, answer under oath being waived; that the said defendants, and each of them, may be enjoined and restrained from selling milk, containing 3.25-4.1% butterfat, at less than thirteen cents per quart retail, in the said Arlington-Alexandria milk market area, as provided in Regulation No. 4, subsection (a), of the rules and regulations adopted by the State Milk Commission for the supervision and control of the Arlington-Alexandria milk market; that all orders and decrees may be entered and proceedings had in this case, and that your complainant may have such other

and further relief as to equity may seem meet and its cause require.

State Milk Commission, by Counsel. —— ——, Attorney General. —— ——, Assistant Attorney General.

[fol. 79] VIRGINIA:

IN THE LAW AND EQUITY COURT, PART TWO, OF THE CITY OF RICHMOND

STATE MILK COMMISSION

v.

LUTHER W. HIGH, Trading as High's; K. A. WEBB, (Mrs.) E. HOLLIDAY, (Mrs.) L. HENDERSON and (Mrs.) C. POWELL

DECREE

This day came the plaintiff, by the Attorney General of Virginia, and presented its bill duly verified by affidavit, and, by leave of court, filed its bill of complaint; whereupon, in accordance with the prayer of the bill, an injunction is awarded the plaintiff, enjoining and restraining the defendants, their agents, servants and employees, from selling milk, containing 3.25-4.1% butterfat, or a higher percentage of butterfat, at less than thirteen cents per quart retail at the places of business of the said Luther W. High within the Arlington-Alexandria milk market area, as provided in Regulation No. 4, subsection (a), of the rules and regulations adopted by the State Milk Commission for the supervision and control of the Arlington-Alexandria milk market.

This injunction, unless sooner enlarged or dissolved, shall remain in force until —— —, ——. The plaintiff being a public governmental agency, no bond is required of it.

[fol. 80] IN UNITED STATES DISTRICT COURT

JOINT AND SEPARATE ANSWER OF J. S. AGNEW, CHAIRMAN, AND KONE BRUGH AND T. R. SNAVELY, MEMBERS OF MILK COMMISSION—Filed June 16, 1936

The defendants, for answer to said bill, or to so much thereof as they are advised it is material for them to answer, answering say:

1. Defendants admit as true all the allegations contained in paragraphs 1, 2, 6, 8, 9, 10, 12, 13, 14, 15 and 16 of the said bill of complaint.

2. Defendants deny the allegations contained in paragraph 3 of the said bill, if the purpose of those allegations is to confer jurisdiction in this court because of diverse citizenship. For further answer to said paragraph, defendants say that the plaintiff, Highland Farms Dairy, Incorporated, is a corporation chartered under the laws of the State of Virginia, with its principal office at Alexandria, Virginia, and that it has appointed Gardner L. Boothe, of the city of Alexandria, Virginia, as its statutory agent. It is, therefore, of the same citizenship as all the defendants. While it is admitted that Luther W. High is a citizen of the United States and of the District of Columbia, all his business, which is the subject of this litigation, is done within the State of Virginia.

3. Defendants neither deny or admit the allegations contained in paragraph 4 of the said bill and, so far as any matter alleged in said paragraph is pertinent to any inquiry necessary to a decision of these proceedings, call for strict proof of same.

4. Defendants are not advised as to the truth of the allegations contained in paragraphs 5 and 7 of said bill, in par- [fol. 81] agraph 5 of which the plaintiff, Highland Farms Dairy, Incorporated, alleges that it has obtained all necessary licenses and permits as are required by the sanitary laws and regulations of the city of Washington, District of Columbia, the State of Maryland and the Commonwealth of Virginia, and in paragraph 7 of which the plaintiff, Luther W. High, alleges that he has obtained all licenses and permits as are required by the sanitary laws and regulations of the Commonwealth of Virginia, and of each city and county therein wherein he conducts his business, for the lawful conduct of his said business. Defendants deny that, so far as the proceedings in this case are concerned, the question of such licenses and permits is in issue.

Defendants deny that either the Highland Farms Dairy, Incorporated, or Luther W. High, has obtained from the State Milk Commission of Virginia, the licenses required of each under the provisions of section 5 of chapter 357 of the Acts of 1934.

5. As to paragraph 11 of the said bill, in which it is alleged that each of the plaintiffs is a distributor within the meaning of the provisions of section 1 of chapter 357 of the Acts of 1934 (commonly called and referred to as the Milk Act), defendants deny that the Highland Farms Dairy, Incorporated, is a distributor under the provisions of the Milk Act construed with reference to the sworn allegations of that corporation contained in said bill. Defendants admit the allegation of the plaintiff, Luther W. High, that he is a distributor within the meaning of the provisions of section 1, subsection (c), of the Milk Act. With reference to the plaintiff, Luther W. High, defendants admit that he is a distributor doing business as High's in establishments conducted by him in the Arlington-Alexandria milk market area under the provisions of subsection (c) of section 1 of the Milk Act.

[fol. 82] 6. Defendants admit the allegation contained in paragraph 17 of the said bill, to the effect that a public hearing upon the establishment of a milk market for the Arlington-Alexandria area was called upon a petition submitted to the Commission by the Virginia and Maryland Milk Producers' Association, and that said hearing was held on February 20, 1936. Defendants also admit that the Commission did not undertake to establish rules and regulations effective for the Arlington-Alexandria milk market until April 1, 1936, and that "Exhibit C" filed with said bill is a copy of the rules and regulations fixed by the Commission for said market.

Defendants deny that the said hearing was insufficiently and arbitrarily conducted, and that no investigation was made, or sought to be made, as provided in subsection (j) of section 3 of the Milk Act; and they especially deny the allegation that they did not take evidence or make any effort to investigate, and failed and omitted to inquire into the reasonableness of prices to be paid or charged in the said market, and failed and omitted to inquire into the cost of production and distribution, including compliance with all sanitary regulations in force in said market, the necessary operation, processing, storage and delivery charges, the price of other foods, and the welfare of the general public, as required by the said Act.

Defendants admit that they adopted rules and regulations for the supervision and control of the Arlington-

Alexandria milk market, effective April 1, 1936, on March 27, 1936. They also admit that, because of injunction proceedings had and held in the Circuit Court of Fairfax county, Virginia, the effective date of the rules and regulations was postponed until June 1, 1936, as alleged in paragraph 18 of said bill.

7. Defendants deny the allegation contained in paragraph 18 of said bill that they proceeded, without further investigation, to adopt and promulgate the said rules and regula- [fol. 83] tions, covering the minimum prices to be paid by milk distributors to producers and the minimum wholesale and retail prices to be charged by distributors, were arbitrarily and capriciously fixed and established.

8. As to the establishment of the Arlington-Alexandria milk market and the investigation required by subsection (j) of section 3 of the Milk Act, defendants show unto the court that a legal notice of the hearing set for February 20, 1936, at 10:00 o'clock a. m., in the John Marshall Hotel, Richmond, Virginia, "to ascertain if it will be to the public interest for the Milk Commission to exercise the power confered under Chapter 357 of the Acts of the General Assembly of 1934 in the Arlington-Alexandria area", was published on February 6 and 13, 1936, in The Sun, a weekly newspaper published in East Falls Church, Virginia, and having a general circulation in the territory embraced, or to be embraced, in the Arlington-Alexandria milk market area, a copy of said legal notice so published being herewith filed as "Exhibit Y" and asked to be read as a part of this answer. A legal notice to the same effect was published on February 6, 12 and 17, 1936, in the Alexandria Gazette, a newspaper published in Alexandria, Virginia, and having a general circulation in the territory embraced, or to be embraced, in the Arlington-Alexandria milk market area. In addition to the legal notices given the general public as detailed, the Commission, from its headquarters in Richmond, Virginia, mailed notices to all known distributors prior to the public hearing on February 11, 1936.

A reference to the minutes and proceedings of said public hearing in the John Marshall Hotel, Richmond, Virginia, having already been made a part of the said bill and marked "Exhibit B", defendants refer to the fact that there was an attendance of twenty, comprising representatives of the

Virginia-Maryland Milk Producers' Association, a number of distributors, two from the city of Washington and one [fol. 84] from Alexandria, Virginia, accompanied by his attorney; the auditor of the Alexandria Dairy, two representatives of the Arlington County Dairies, Clarendon, Virginia; W. A. Hazel, of Falls Church, Virginia; Sam Fagelson, a producers of Alexandria, Virginia; a merchant of Alexandria, Virginia, and a milk hauler of Alexandria, Virginia. At said public hearing a schedule of prices was submitted by the secretary of the Virginia-Maryland Milk Producers' Association, and a sketch or plan of the tentative production area. Questions as to whether there were any objections to the production area were asked, to which there was no response. Except for the remarks advanced by counsel for the Alexandria Dairy Products Company as to the practicability of a market, no objection was made to the proposed area, nor to the prices suggested, with the exception of Mr. Hazel, representing Hazel's Dairy of Falls Church, Virginia, who opposed any regulation, suggested, no price and, at his request, went on record as "absolutely opposed to any form of regulation." As will be seen by reference to page 6 of "Exhibit B" filed with said bill of complaint, under the title "Prices of Milk", there was a discussion of the milk prices to be adopted, and, upon call for objections to the price scale which had been submitted to the Commission, there was none except from Mr. Hazel, "who opposed generally." Before the adjournment of the meeting, the chairman of the Commission stated that "after the first of March the Commission would be glad to meet with any group who wished to make recommendations or suggestions relative to milk regulations, and would give them as much time as possible."

And again, referring to the minutes of said meeting of February 20, 1936, it will be seen that Judge W. S. Snow, of Alexandria, Virginia, representing Mr. Burchell of the Alexandria Dairy Products Company, had already been in conference with Edwin H. Gibson, Assistant Attorney General and counsel for the State Milk Commission, who had [fol. 85] assured Judge Snow that the Commission had no authority to regulate interstate milk. As a matter of fact, Judge Snow had been informed by Major Gibson that the State Milk Commission did not intend to attempt to control or regulate the interstate milk business of any person en-

gaged in that business in the proposed Arlington-Alexandria milk market area. The defendants, as a Commission and individually, discussed with their counsel the legal principles applicable to interstate commerce as partially limiting their effective control of the proposed market, and had been fully advised of the interstate commerce law, and, as will be seen by the regulations already in evidence as a part of the said bill, made no effort to control interstate commerce; and, as has already been done before Your Honor by defendants' counsel, as will be seen by a reference to the order entered in this case on May 29, 1936, counsel expressly disclaimed any intention of interfering with interstate commerce, and the defendants now, individually and as a Commission, disclaim any intention of interfering with such commerce.

Before going into detail as to the manner of their compliance with section 5 of the Milk Act, defendants desire to reply in detail to certain sub-paragraphs of paragraph 21 of the said bill.

9 (a) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually or as a Commission, attempts to interfere with and prohibit the Highland Farms Dairy, Incorporated, from shipping milk into the Commonwealth of Virginia from the District of Columbia, and expressly disclaim any such administrative intention.

(b) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually [fol. 86] or as a Commission, attempts to interfere with and prohibit the said plaintiff, Luther W. High, from importing milk into the Commonwealth of Virginia from the District of Columbia, and expressly disclaim any such administrative intention.

(c) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually or as a Commission, requires the plaintiff, Highland Farms Dairy, Incorporated, to purchase milk at the price fixed by the rules and regulations of the Commission when, as a part of such purchases, the seller ships and exports said milk

outside of the Commonwealth of Virginia, and expressly disclaim any such administrative intention.

(d) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually or as a Commission, requires the plaintiff, Luther W. High, to purchase milk at the price fixed by the rules and regulations of the Commission (or at any other fixed price) when such purchases are made by said plaintiff, Luther W. High, outside of the Commonwealth of Virginia, and expressly disclaim any such administrative intention.

(e) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually or as a Commission, is an arbitrary interference with the freedom of contract, or attempts to render invalid the present and existing contracts for the purchase and sale of milk and cream heretofore made by and between the plaintiff, Highland Farms Dairy, Incorporated, and the farmers, producers or milk sheds located in the Commonwealth of Virginia, so far as the purchase of milk and cream by the plaintiff corporation for shipment in interstate commerce. De- [fol. 87] fendants admit their intention of applying the Milk Act, and the rules and regulations adopted pursuant thereto for the Arlington-Alexandria milk market area, to all contracts between the plaintiff corporation and others for the purchase of milk for use in purely intrastate commerce, and deny that the application of the law and the rules and regulations contravene the provisions of the Fourteenth Amendment to the Constitution of the United States, providing that no person shall be deprived of property without due process of law.

(f) Defendants deny that either chapter 357 of the Acts of 1934 or the rules and regulations adopted pursuant thereto, as interpreted by defendants either individually or as a Commission, is an aribtrary interference with the freedom of contract and are attempts to render invalid the present and existing contracts for the purchase and sale of milk and cream heretofore made by and between the plaintiff, Luther W. High, and the plaintiff, Highland Farms Dairy, Incorporated, as the defendants, individually and as a Commission, have heretofore in their answer expressly

disclaimed any intention of applying the Milk Act, or its rules and regulations adopted pursuant thereto, in any manner to contracts or transactions made and entered into by and between the plaintiff, Luther W. High, and the plaintiff, Highland Farms Dairy, Incorporated. Defendants admit their intention of applying the Milk Act, and the rules and regulations adopted pursuant thereto for the Arlington-Alexandria milk market area, to all contracts between the plaintiffs for the purchase and sale of milk in purely intrastate commerce, and deny that the application of the law and the rules and regulations contravene the provisions of the Fourteenth Amendment to the Constitution of the United States, providing that no person shall be deprived of property without due process of law.

(g) Defendants, individually and as a Commission, ad- [fol. 88] mit that the purchase of milk and cream by the plaintiff, Luther W. High, from the plaintiff, Highland Farms Dairy, Incorporated, as set forth by the plaintiff, Luther W. High, in the last sentence of paragraph 6 of said bill, and in which he says, "The said plaintiff Luther W. High purchases in the District of Columbia, under contracts, all of the output of milk of the said plaintiff Highland Farms Dairy", is a transaction in interstate commerce and is not subject to the provisions of the Milk Act, or the rules and regulations of the Commission, and the defendants expressly disclaim any intention of attempting to apply the Milk Act and/or the rules and regulations to such interstate commerce.

(h) Defendants are not advised as to the allegations contained in sub-paragraph H of paragraph 21 of the said bill, in which it is alleged that the transactions between plaintiffs are conducted and consummated in the city of Washington, District of Columbia, and they neither admit nor deny them. If it is meant by sub-paragraph H that the plaintiff, Luther W. High, purchases milk and cream from the plaintiff, Highland Farms Dairy, Incorporated, in the city of Washington, District of Columbia, and imports it into the Commonwealth of Virginia, defendants admit that such traffic is interstate commerce; but, if it is intended to allege that, because milk and cream are bought in the city of Washington, District of Columbia, imported into the Commonwealth of Virginia, and sold by the importer at

retail in established places of business in Virginia, defendants deny that such transactions constitute interstate commerce.

(i) In sub-paragraph I of paragraph 21 of said bill, it is alleged that the rules and regulations adopted for the Arlington-Alexandria milk market, as interpreted in their administration by the defendants, are void and unconstitutional "for the reason that said rules and regulations are unreasonable, arbitrary and capricious, have no reasonable [fol. 89] relation to their operation and effect to the purpose of the said Commission and contravene the provisions of the 14th Amendment to the United States Constitution providing that no person shall be deprived of property without due process of law." Defendants deny these allegations, although it may be said that they are of such an omnibus character, so indefinite and devoid of specifications that, if necessary to notice them at all, defendants would answer by way of demurrer.

10. Defendants deny the allegation contained in paragraph 22 of said bill, in which it is alleged that the business of each plaintiff, as a distributor, is and will continue to be threatened with total extinction in the Commonwealth of Virginia, resulting in loss and damage, for which neither has, nor can have, relief. Defendants cannot understand why or how the business of the plaintiff, Highland Farms Dairy, Incorporated, can be affected in the Commonwealth of Virginia when, as it has alleged throughout the said bill, its only business consists of wholesale transactions in the city of Washington, District of Columbia; nor can defendants understand in what way the business of the plaintiff, Luther W. High, can be totally extinsuighed in the Commonwealth of Virginia by requiring him to sell milk at the same retail price that all other retail distributors are required to charge their customers. If a market is established in the Arlington-Alexandria area, and prices are fixed for the retail sale of milk in that area, those prices will apply to all engaged in the same line of business, and the plaintiff, Luther W. High, will be on an equal footing with all other distributors of the same class. If no market is established, then the plaintiff, Luther W. High, will be subject to the same competition of other retail milk dealers. In practice, unregulated price fixing by retail milk dealers

will result in price cutting, price cutting in retail sales will [fol. 90] result in demoralizing the market of producers, and a demoralization of that market will ultimately result in the destruction of the dairy industry in the Arlington-Alexandria milk production area, all of which consequences will defeat the very purpose the General Assembly of Virginia had in mind when it passed the Milk Act of 1934.

11. In addition to the charges of the unconstitutionality of the Milk Act upon numerous related and unrelated grounds, the charge is made that the Commission, in establishing the Arlington-Alexandria milk market and in fixing the prices payable to producers and chargeable by distributors, inefficiently and arbitrarily acted at the hearing held by it on February 20, 1936, in that no investigation was made, or sought to be made, of the conditions which, by section 5 of the Milk Act, should have guided the defendants in their conclusion; that the Commission failed and omitted to inquire into the reasonableness of prices to be paid or charged in the said market, and failed and omitted to inquire into the costs of production and distribution; and that the Commission subsequently adopted rules and regulations "arbitrarily and capriciously" fixing and establishing prices to be paid by distributors to producers, and the minimum wholesale and retail prices for said market.

These allegations contained in paragraphs 7 and 18 of said bill, and all other allegations contained in said paragraphs which may not have been denied heretofore, are hereby expressly denied.

12. Defendants show unto the court that printed notices were given of the hearing held on February 20, 1936, in which the public was informed that a meeting called for that day was to be held in the John Marshall Hotel, Richmond, Virginia, to ascertain if it would be to the public interest for the Milk Commission to exercise the power conferred upon it, under chapter 357 of the Acts of 1934, in the Arlington-Alexandria milk market area. The Commission held this meeting upon the written application [fol. 91] of the Virginia-Maryland Milk Producers' Association, as privided for by subsection (i) of section 3 of the Milk Act. The meeting was largely attended by those

interested both in the production and distribution of milk, and the advisability of establishing a milk market in the Arlington-Alexandria area was duly and fully considered. Numerous phases and problems were presented and discussed, and the Commission fully performed its statutory duty in reference to the calling and the conducting of that meeting. The plaintiffs were absent although, because of the general public interest of the producers and distributors in the proposed area and because of the wide circulation of the papers in which the Commission gave formal notice of said meeting, defendants believe and charge that both plaintiffs had ample notice of the time, place and purpose of said meeting of February 20, 1936, and had ample opportunity to attend, and would have received a like opportunity to make objections to the establishment of the market and to amplify their reasons for such opposition. The Commission further believes, and so charges, that the plaintiffs, and each of them, understood and were advised that the Commission did not confine its investigation to the public meeting. It acted with fairness, intelligence and impartiality in determining upon the establishment of the market and the fixing of the minimum [and maximum]* wholesale and retail prices to be charged for milk, and the different prices for different grades of milk. The Commission at the time of its adjournment notified those interested to appear, consult with and give evidence before the Commission and its members as to the cost of production and distribution, including all costs of every character necessarily incurred in compliance with the sanitary regulations in force in the proposed market, necessary operation, processing, storage and delivery charges, the prices of other foods, and the welfare of the general public.

The Commission, as originally constituted, consisted of [fol. 92] its present members.

After the effective date of the Act, which because of its emergency clause was signed by the Governor and went into effect on March 29, 1934, the Commission and each of its members, two of whom were, pursuant to the requirements of the Milk Act practical dairymen and had engaged in the production of milk for a considerable period of time, began an intensive study of the milk production and

---

[* Matter enclosed in brackets erased in copy.]

distribution business throughout the State of Virginia and had, prior to the establishment of the Arlington-Alexandria milk market, established numerous milk market areas, and had adopted rules and regulations, including price fixing, for all of said markets. The establishment of said markets has resulted in effectuating the purposes for which the Milk Act was passed, and the Commission has been able to maintain in all of said markets, with the usual exception of violations by chiselers and price cutters, conditions eminently satisfactory to producers, distributors and the general public by insuring to producers a fair and reasonable price for their product, to distributors a reasonable price for their services, and to the general public a high quality of pure milk at a fair and reasonable price.

In the establishment of the markets, the Commission has been guided by a careful, painstaking consideration of all the elements necessary for a fair, well-considered, conscientious determination of the prices payable to producers and the prices chargeable to consumers.

Pursuant to the notice given at the date of the hearing that the Commission would hear all interested in the proposed market for the Arlington-Alexandria area after March 1, 1936, one or more members of the Commission were in constant attendance at the office of the Commission in the Capitol Building, Richmond, Virginia, for twenty-four days—from March 3 to March 28, 1936, both [fol. 93] inclusive—during which period several representatives of the largest distributors in the proposed market came before the Commission, and the Commission went over with these representatives in great detail the cost of distribution in said market. Among those appearing were Mr. Burchell of the Alexandria Dairy Products Company and his auditor; Mr. Davis of the Arlington Dairy, Incorporated, who went into considerable detail as to the cost of distribution in the Arlington-Alexandria milk market area.

The Commission also had before it for consideration the breakdown cost of distribution in a number of widely scattered milk markets throughout the United States, as well as a very extensive breakdown cost of distribution by the largest distributor in the Norfolk market.

In addition, the Commission has had before it a large mass of statistics on production and distribution costs, and,

among other valuable statistics, the Commission had the benefit of "The Virginia Farm Economics", published by the Department of Economics of Rural Sociology, Virginia Polytechnic Institute, Blacksburg, Virginia; "The Dairy Herd Improvement Association", sponsored by the Virginia Polytechnic Institute, Dairy Extension Department, Blacksburg, Virginia; "Marketing Fluid Milk in Four Virginia Cities", published by the Virginia Agricultural Experiment Station, Blacksburg, Virginia; "An Economic Study of Dairy Farming in the Norfolk Milk Shed", published by the Virginia Polytechnic Institute, Virginia Agricultural Experiment Station, Blacksburg, Virginia; "Prices and Consumption of Milk in Specific Cities as Related to Industrial Payroll and Other Industrial Factors", published by the Agricultural Experiment Station, University of Illinois; "Cost of Producing Milk and Dairy Farm Organization in Spokane and Stephens Counties", published by Washington Agricultural Experiment Station, Pullman, Washington; "Farm Profits and Factors Influencing Farm Profits on Ninety-eight Dairy Farms in [fol. 94] Sussex County", published by New Jersey Agricultural Experiment Station, New Brunswick, New Jersey; "Report of Joint Legislative Committee to Investigate the Milk Industry in the State of New York", 1933; "Proceedings of the Middle States Conference of Milk Control", and "Determining a Fair Spread for Distributors."

In connection with the cost of production, the Commission had before it the breakdown of the estimated cost of production of milk in the Arlington-Alexandria area. During the time the Commission had under consideration the fixing of the price to be paid producers, a number of the members of the Virginia-Maryland Milk Producers' Association appeared before it and went into detail as to the cost of the production of milk in the Arlington-Alexandria milk market area.

The prices arrived at by the Commission, as to the cost of production of milk under proper sanitary conditions in compliance with the health laws of the State, induced it to fix the prices payable to producers with reasonable accuracy and certainty, as cost of production is fairly uniform throughout the State of Virginia, although there are variations.

Defendants deny that the assessment of two cents per hundred pounds on all milk sold by distributors is an impost or duty forbidden by Article I of section 8 of the Constitution of the United States, but say that it is levied pursuant to the provisions of subsection (b) of section 11 of the Act complained of for the sole purpose of raising the revenue necessary to cover the cost of administering the said law, and is not levied for revenue purposes and is not excessive for the purposes authorized by the Act.

The breakdown of the cost of production furnished the Commission by the Virginia-Maryland Milk Producers' Association was based upon an attempted survey of its entire membership of 1167, of whom 433 returned replies [fol. 95] to a questionnaire, the form of which was made up by the Bureau of Agricultural Economics of the United States Department of Agriculture. The area covered included the counties of Culpeper, Fairfax, Fauquier, Loudoun, Madison, Orange and Pri-ce William. The reports of the membership were carefully compiled, considered and approved by the Federal Economics Department. In its breakdown, the association fixed the price of feeds at 40.91% of the total cost of production. This estimate of feed cost was adopted by the association from a report of "The Dairy Herd Improvement Association" of the Virginia Polytechnic Institute, Blacksburg, Virginia, for the year 1935, and this Commission accepted that estimate of feed cost production as being as accurate and reliable as any ascertainable, and was largely influenced in fixing its production cost figures. However, the total breakdown, according to the association's survey estimate, cost of production was 30.11¢ per gallon. This was in excess of the estimate of "The Dairy Herd Improvement Association", and the Commission, in its discretion and basing its conclusions upon all the evidence before it fixed 3.08 per 100 pounds, or 26½ cents per gallon as a fair price to producers in the Arlington-Alexandria milk production area.

And now, having fully answered, these defendants pray to be hence dismissed, with their reasonable costs by them in this behalf expended.

(Sgd.) J. S. Agnew, Kone Brugh, T. R. Snavely. State Milk Commission of Virginia, by (Sgd.) [fol. 96] J. S. Agnew. (Sgd.) John S. Barbour. Edwin H. Gibson, P. D.

Duly sworn to by J. S. Agnew. Jurat omitted in printing.

[fol. 97] Legal Notices

Public Hearing for the Arlington-Alexandria Milk Market

On the Twentieth day of February 1936, at Ten o'clock a. m., in the John Marshall Hotel, Richmond, Virginia, a public hearing will be held to ascertain if it will be to the public interest for the Milk Commission to exercise the power conferred under Chapter 357 of the Acts of the General Assembly of 1934 in the Arlington-Alexandria area.

Given under our hand this Fourth day of February, 1936.

Milk Commission of Virginia, E. C. C. Woods, Secretary.

Issue of Feb. 6, 1936.

• • • • • • •

Legal Notices

Public Hearing for the Arlington-Alexandria Milk Market

On the Twentieth day of February 1936, at Ten o'clock a. m., in the John Marshall Hotel, Richmond, Virginia, a public hearing will be held to ascertain if it will be to the public interest for the Milk Commission to exercise the power conferred under Chapter 357 of the Acts of the General Assembly of 1934 in the Arlington-Alexandria area.

Given under our hand this Fourth day of February, 1936.

Milk Commission of Virginia, E. C. C. Woods, Secretary.

Issue of Feb. 13, 1936.

[fol. 98] In United States District Court

Amended Answer—Filed June 17, 1936

Now comes the respondents and ask leave to file this their amended answer and to add to the original answer the following paragraph:

The respondents move to dismiss the bill because of the misjoinder of parties plaintiff, a misjoinder of causes of action, and because the bill states no cause of action within

the jurisdiction of this court, and because the bill states no cause for equitable relief.

Respectfully submitted, (Sgd.) Kone Brugh, T. R. Snavely, J. S. Agnew. State Milk Commission of Virginia, by (Sgd.) J. S. Agnew. (Sgd.) John S. Barbour, Edwin H. Gibson, P. D.

[fol. 99] IN UNITED STATES DISTRICT COURT

ORDER FILING AMENDED ANSWER—Entered and filed June 17, 1936

This day came the respondents herein, by counsel, and asked leave of Court to file their amended answer, and on their motion and for good cause shown, it is

Ordered that said respondents be and they hereby are allowed to file their amended answer, and the same is accordingly done.

(Sgd.) Robert N. Pollard, United States District Judge.

June 17, 1936.

[fol. 100] IN UNITED STATES DISTRICT COURT

ORDER DENYING TEMPORARY RESTRAINING ORDER, ETC.—Entered and Filed May 29, 1936

This day came the plaintiffs by their solicitors, and the defendants by the Assistant Attorney General of the Commonwealth of Virginia, upon the Bill of Complaint verified May 27, 1936, and Exhibits thereto annexed, and the affidavit of Luther W. High, sworn to on May 27, 1936, and upon the motion of the solicitors for the plaintiffs for a temporary restraining order enjoining and restraining the defendants during the pendency of this action, and until their application for an interlocutory injunection may be heard:

(a) From enforcing or exercising the powers or any of the powers of the said defendants in the Arlington-Alexandria Milk Market;

(b) From making, adopting, enforcing, promulgating, or putting into effect rules, regulation or orders for the supervision and control of the Arlington-Alexandria Milk Market;

(c) From exercising its powers, enforcing or putting into effect in the Arlington-Alexandria Milk Market, pursuant to the provisions of the Act of the General Assembly of Virginia, approved March 29, 1934, known as The Milk and Cream Act, rules, regulations or orders fixing minimum wholesale and retail prices to be charged for milk, requiring distributors to be licensed, or levying assessments against a distributor of milk which has not been purchased from a licensed distributor as defined in said Act;

and said motion was argued by counsel.

And upon consideration of the Bill of Complaint and Exhibits, and the said affidavit, and upon the argument aforesaid, and upon the assurance of the Assistant Attorney [fol. 101] General of the Commonwealth of Virginia that it is not the intention of the office of the Attorney General nor the intention of the Milk Commission of the Commonwealth of Virginia to apply or enforce the provisions of said Milk and Cream Act, nor the rules, regulations or orders of said Commission to or against the transactions of these plaintiffs in interstate commerce; and upon the further assurance of the Assistant Attorney General that if or insofar as the rules and regulations of the said Commission applicable to the said Arlington-Alexandria Milk Market promulgated March 27, 1936, and to become effective at 12:01 A. M. June 1, 1936, apply to or purport to control the transactions of the plaintiffs in interstate commerce, the same will be administered, and if necessary modified, to avoid application to or enforcement in or upon such transactions in interstate commerce; it appearing to the Court that there is no present danger of irreparable damage being caused to the plaintiffs, the Court is of opinion that the said motion for a temporary restraining order should be, and it is hereby, denied, but without prejudice to the rights of the plaintiffs to make such further application to this Court as they may see fit or as hereinafter indicated;

And it further appearing to the Court that there may arise in the future and after the rules and regulations of the said Commission applicable to the said Arlington-Alex-

andria Milk Market become effective at 12:01 A. M. June 1, 1936, differences of opinion between the plaintiffs and the defendants regarding the character of the transactions of the plaintiffs, or either of them, as being in interstate or intrastate commerce, and with respect to the validity of said rules and regulations in their application to the business transactions of the plaintiffs in said Arlington-Alexandria Milk Market, leave is reserved to the plaintiffs, or either of them, to make such further application to this [fol. 102] Court for a temporary restraining order if and when in their judgment the need therefor may arise; and by consent of counsel for both parties the action of this Court upon the application of the plaintiffs for an interlocutory injunction and for a hearing thereon before three Judges, including a Circuit Judge of the United States, as provided in Section 380 of Title 28 U. S. Code (Judicial Code, Section 266, Amended) is deferred, and this cause continued generally.

Dated in Chambers in the District Court of the United States for the Eastern District of Virginia, at the City of Richmond, in the State of Virginia before the undersigned Judge of said Court, this 29th day of May, 1936.

(Sgd.) Robert N. Pollard, Judge.

[fol. 103] IN UNITED STATES DISTRICT COURT

In Equity. No. 363

HIGHLAND FARMS DAIRY, INCORPORATED, a Corporation, and LUTHER W. HIGH, Complainants,

vs.

J. S. AGNEW, Chairman, and KONE BRUGH and T. R. SNAVELY, as the Members of the Milk Commission of the Commonwealth of Virginia, Defendants

(Argued July 30, 1936. Decided October 3, 1936)

Before Soper, Circuit Judge, and Way and Pollard, District Judges

I Concur. (Sgd.) Luther B. Way, U. S. D. J. (Sgd.) Robt. N. Pollard, U. S. D. J.

Hunton, Williams, Anderson, Gay & Moore, Philip W. Rosenfeld, Counsel for plaintiffs, (E. Randolph Williams,

T. Justin Moore, Stephen H. Simes and Philip W. Rosenfeld, of Counsel) and Edwin H. Gibson, Assistant Attorney General and John S. Barbour, Counsel for Defendants.

OPINION OF THE COURT—Entered and filed Oct. 3, 1936

SOPER, Circuit Judge:

The plaintiffs in this suit in equity challenged the constitutionality of the Virginia Milk and Cream Act, Ch. 357 of the Acts of the General Assembly of Virginia of 1934, and prayed for a temporary and permanent injunction enjoining the members of the State Milk Commission, a body created by the Act, from exercising the powers therein conferred upon it. A court of three judges was organized under the provisions of 26 USCA 380 to consider the case.

Material provisions of the statute may be summarized as follows: The preamble declares that the prosperity and health of the people of the state depend to a substantial degree upon the production and distribution of milk and cream; that the present economic emergency is in part the [fol. 104] result of the disparity between the prices of milk and cream and other commodities which has broken down the orderly production and marketing of milk and cream; that unhealthful, unfair, unjust, destructive and demoralizing trade practices have grown up and are carried on in the production, sale and distribution of milk and cream in the state which impair the constant supply of pure wholesome milk to the inhabitants; and that in order to protect the well being of the people and to promote the public welfare, public health and public peace, the production, transportation, processing, storage, distribution and sale of milk and cream in the state should be supervised and controlled in the exercise of the police power of the state as a business affecting the public peace, health and welfare.

"Distributor" is defined by Section 1 to include amongst others, persons who sell or market milk at wholesale or retail, or who operate stores for the sale of milk at retail for consumption off the premises, and persons, wherever located or operating, whether within or without the state, who purchase, market or handle milk for resale in the state. "Market" means one or more cities, towns or villages of the state and the surrounding territory designated by the Commission as a natural marketing area.

Section 2 of the Act creates a state Milk Commission. Section 3 confers upon the Commission the power, amongst others, (b) to investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the state; (c) to supervise, regulate and control such operations in milk for consumption within the state; (g) to make and enforce rules and regulations necessary to carry out the purposes of the act; (m) to define what shall constitute a natural market area and fix the limits of the area within which milk shall be produced to [fol. 105] supply any such market area; (i) to exercise its powers in any market after a public hearing has been held for such market, and after the Commission determines that it would be to the public interest that it shall exercise its powers in such market. The hearing may be had upon its own motion or upon the application of producers supplying a substantial proportion of the milk consumed in the market or of distributors distributing a substantial proportion of the milk consumed in such market. The Commission may withdraw the exercise of its powers from any market after a public hearing has been held and the Commission determines that it will be to the public interest to do so. The Commission shall withdraw the exercise of its powers from any market upon written application of a majority of the producers (measured by volume) of milk produced and a majority of the distributors (measured by volume) of milk distributed in said market acting jointly. (j) The Commission may, after public hearing and investigation, fix the prices to be paid producers by distributors in any market and may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market. In determining the reasonableness of the prices to be charged, the Commission is to be guided by the cost of production and distribution, including compliance with sanitary regulations, operation and delivery charges, and the welfare of the public. The Commission may require all distributors in any market to be licensed by the Commission for the purpose of carrying out the provisions of the act. It may decline to grant any license and suspend or revoke a license upon due notice, and after hearing under Section 6 any order of the Commission in refusing to issue a license or suspending or revoking a license may be reviewed on appeal to the Supreme Court of Appeals.

Under Section 4, no distributor in any market in which the act is in effect shall buy milk from producers or others [fol. 106] for sale within the state, or sell or distribute milk within the state unless such distributor is duly licensed under the act. It is unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed under the act.

Section 8 provides substantial penalties to be imposed upon any person found guilty of failing or refusing to comply with any subpœna issued by the Commission. Section 9 provides that the Milk Commission shall prepare an annual budget and collect the sums required therefor from the local milk boards in the form of monthly assessments, which will not exceed 2¢ per hundred pounds of milk handled in each market. The Local Milk Boards, provided under Section 11, consisting of five members, are to be established by the producers and distributors in a market area to carry out the provisions of the act in conjunction with the State Milk Commission. The expenses of the Milk Board, including the assessment levied by the State Milk Commission, shall be met by an assessment of not over 2¢ per hundred pounds of milk handled by distributors, and not over 2¢ per hundred pounds sold by producers. Section 13 provides that any person violating any provision of the act or of any license issued by the Commission shall be guilty of a misdemeanor and punished by fine of $25 to $100 or imprisonment in jail for not less than thirty days or more than one year, or by both fine and imprisonment. Section 14 provides that no provision of the act shall apply or be construed to apply to foreign or interstate commerce unless the same may be effective pursuant to the Federal Constitution. Section 16 provides that if any part of the act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby. Section 17 provides that the period of public emergency during which the act shall be effective shall be until such date as the legislature may designate to be the termination thereof, or if the [fol. 107] legislature be not in session, the date so designated by a proclamation of the governor.

The parties have agreed upon a stipulation of facts from which it appears that the Highland Farms Dairy, Incorporated, is a Virginia corporation which has its principal place of business in the District of Columbia where it

operates a creamery for the pasteurizing and processing of milk, all of which it sells under contract to the individual plaintiff, Luther W. High, a resident of the District of Columbia. High operates a group of retail stores for the sale of dairy products in Virginia, Maryland and the District of Columbia, and purchases all of the milk sold by him in Virginia from the Highland Farms Dairy. The latter purchases its milk under contract from farmers and producers in Virginia, Maryland and the District of Columbia, for delivery to the creameries in Washington. About 20% of this milk is purchased from Virginia producers, substantially all of which is produced in an area which has been designated by the Milk Commission as the Arlington-Alexandria Production Area. All of this milk, when received at the dairy, is commingled with milk purchased elsewhere, and it is impossible to determine what portion of the milk eventually sold by High in the territory designated by the Milk Commission as the Arlington-Alexandria Sales Area was originally produced in the said production area.

High makes no delivery of milk, but sells it all for cash at retail in bottles to purchasers at his stores. It is therefore essential to his business that there be a differential between the price charged by him and the prices of other distributors who permit charge accounts and make deliveries. The bottled milk distributed by High in Virginia is sold to him in the District of Columbia but is delivered to his Virginia stores by the dairy trucks upon orders received by telephone.

On March 27, 1936, the State Milk Commission established the Arlington-Alexandria Milk Market, and fixed the prices [fol. 108] at which milk should be sold therein. This was done after a public hearing at Richmond, Virginia, on February 20, 1936, which was called by the Commission at the request of the Virginia and Maryland Milk Producers' Association to consider the establishment of such a market. Notice of the meeting was advertised in two newspapers in the area affected from February 6 to February 17, 1936, two notices appearing in one paper and three in another. Consequently producers, consumers and distributors in the area generally had knowledge that the hearing was to be had. Neither of the plaintiffs, however, was present at the meeting or represented thereat. The Commission gave notice at

the hearing that it would consult with any group with regard to the establishment and the regulations to be issued, and this offer was accepted by various individuals between the date of the hearing and the establishment of the area. In establishing the market and the governing rules and regulations, the Commission considered not only the statements and testimony that were made at the public hearing, but also certain treatises upon the production and distribution of milk. The sales and production areas and the governing rules and regulations were finally made effective on June 1, 1936. Plaintiffs had knowledge of the establishment of the area and of the adoption of the rules and regulations, but continuously sold milk at prices lower than the minimums prescribed for wholesalers and retailers respectively in the regulations adopted. For example, the prices per quart fixed by the Commission for the sale of cultured whole milk at wholesale and retail and the prices actually charged therefor by the dairy to High at wholesale, and by High to consumers at retail, were as follows:

	Wholesale	Retail
Commission's price	11¢	13¢
Dairy's price in Washington	6¢	
High's price in Virginia		8¢

[fol. 109] A bill similar in purpose to the act finally passed by the Virginia legislature was introduced in the House of Delegates on February 19, 1934, but was rejected by a vote of that body on March 5, 1934. The bill, which eventually became the Milk and Cream Act, was introduced on March 10, 1934, the last day of the session, accompanied by a letter from the governor of the state urging its passage. It passed both houses of the legislature on that day, printings and constitutional readings being waived.

The original bill of complaint was filed herein on May 29, 1936, and prayed for a temporary restraining order enjoining the Milk Commission from exercising its powers in the Arlington-Alexandria Milk Market during the pendency of the action and until the application for interlocutory injunction could be heard. The District Judge, however, refused a restraining order upon the ground that there was no showing of a present danger of irreparable damage, without prejudice to the right of the plaintiff to make subsequent applications. High made no application

for a license under the act, and on June 6, 1936, the Commission threatened to invoke against him the remedy of injunction specified in Section 12 of the act wherein it is provided that if any person fails to comply with any rule or order of the Commission, the Hustings Court of the City of Richmond, upon application of the Commission, shall compel obedience by attachment proceedings for contempt. The amended bill of complaint was thereafter filed in which application for a temporary restraining order and an interlocutory and permanent injunction was renewed; and an answer having been filed, the case came before the court upon these applications.

The plaintiffs' contentions with reference to the constitutionality of the act may be summarized as follows:

(I) The act cannot be upheld as an emergency price fix-[fol. 110] ing measure in the exercise of the police power of the state because (a) there was a total absence of any legislative investigation into the facts; and (b) the legislature did not determine that an emergency existed, but (1) delegated the power to the Commission to determine whether or not the emergency existed, and if so, in what parts of the state; and (2) authorized the producers and distributors controlling a majority in volume of the milk in any market to put an end to the operation of the act therein; and (3) failed to fix a definite time limit to the operation of the act.

(II) The act is invalid because it contains a delegation of legislative power to the Milk Commission contrary to the state constitution to establish markets and exercise its powers of control over the sale of milk therein and to withdraw the exercise of its powers from such market, to fix prices of the sale of milk, and to issue and revoke licenses to persons to engage in the milk business without reference to any prescribed standard.

(III) The exercise of the powers conferred upon the Commission, as above set out, necessarily involved a denial of the equal protection of the laws and a denial of due process in contravention of the Fourteenth Amendment to the Federal Constitution.

(IV) The action of the Milk Commission in (1) establishing a market, (2) in fixing minimum prices and (3) in adopting rules and regulations, constituted a denial of due process because of procedural errors on the part of

the Commission in that (1) the action was based in part on data not introduced in evidence at the public hearing and (2) no evidence as to the cost of the production of milk was taken at that hearing.

(V) The act and the regulations passed by the Milk Commission are invalid because they constitute an interference on the part of the state with interstate commerce in that (1) they required the Highland Farms Dairy, a corporation [fol. 111] of the District of Columbia, doing no business in Virginia, to secure a license in order to engage in interstate commerce; (2) and fixed the prices to be paid by High to the Highland Farms Dairy for milk sold to him by the corporation in the District of Columbia; and (3) authorized the Commission to levy an assessment on milk shipped in interstate commerce.

The authority of a state legislature in the exercise of the police power to regulate the price of milk through the agency of an administrative board is established by the decision of the Supreme Court in Nebbia vs. New York, 291 U. S. 502. An act of the state legislature was upheld which established a milk control board with power, among other things, to fix the retail prices to be charged for milk for consumption off the premises where sold. The court held that the rights of property and of contract are not absolute and that the Fifth Amendment, in the field of federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation of private business for the public welfare, but require only that the laws shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object to be attained; that the private character of a business does not exempt it from price regulation in the common interest, and that the New York legislature, having found that the low price of milk in the state had led to a demoralization of the market and affected the health and prosperity of the people, the legislature acted within the scope of its power in prescribing the regulation described. For later decisions of the Supreme Court see Borden's Co. vs. Baldwin, 293 U. S. 194 and Borden's Co. vs. Ten Eyck, 297 U. S. 251.

Of equal importance in the determination of the pending case is the decision of the Supreme Court of Appeals of Virginia in Reynolds vs. Milk Commission of Virginia, 163

Va. 957, 179 S. E. 507, in which the constitutionality of the [fol. 112] Virginia Milk Control Act was upheld by a divided court. It was held that there are no substantial differences between the Virginia Act and the New York Act, and that the Virginia Act does not contravene the Fourteenth Amendment of the Federal Constitution, or the similar provision found in Section 1, Article 1 of the Virginia Constitution, but, on the contrary, is a proper exercise of the police power of the state in the public interest in view of the uncontroverted finding by the Virginia legislature of an imperative need to regulate the milk industry in the state even to the extent of fixing prices so as to protect the industry from serious impairment or destruction.

The court declared that the state legislature was better qualified than the court to determine the necessity and degree of regulation of an industry, and that its conclusions should not be disturbed unless they are clearly arbitrary and unreasonable. It was pointed out that arbitrary regulations issued by the Board might be invalid without affecting the constitutionality of the act, and that if the Commission should promulgate such regulations, the courts would declare them to be void.

The court considered the argument that the power given to the Commission to make and enforce rules and regulations was a delegation of legislative power to enact prohibitory legislation operative only in certain areas defined by the Commission and showed that a similar provision had been upheld in the Nebbia case.

Similarly, State Milk Control Acts have been held valid as within the police power of the state in the following decisions of state courts. People vs. Nebbia, 262 N. Y. 259; State vs. Newark Milk Co., 118 N. J. Eq. 504, 179 Atl. 116; State ex rel. Finnegan vs. Lincoln Dairy, (Wisc.) 265 N. W. 197; Albert vs. Milk Control Board, (Ind.) 200 N. E. 688; Rohrer vs. Milk Control Board (Pa.) 186 Atl. 336; Franklin vs. State, (Ala.) 169 So. 295; Miami Home Milk Pro- [fol. 113] ducers Assn. vs. Milk Control Board, (Fla.) 169 So. 541. In three states, the Supreme Court without questioning the extension of the police power to cover price fixing regulations by state boards under Milk Control Acts, have declared the local statutes invalid because of an improper delegation of legislative power. See Griffiths vs. Robinson, 181 Wash. 438, 43 P. (2) 977; Md. Cooperative

Milk Producers vs. Miller, (Md.) 182 Atl. 432; Van Winkle vs. Fred Maier, (Ore.) 49 P. (2) 1140.

Notwithstanding these decisions, the plaintiffs contend that the Virginia act is unconstitutional as a violation of the due process clause of the Fourteenth Amendment for reasons not considered in Reynolds vs. the Milk Commission. It is conceded that the legislature may have had power to pass a milk control price fixing act, if the legislature had found that the circumstances of emergency described in the preamble of the act actually existed; but it is asserted that the legislature failed to make such a determination and left the matter to the uncontrolled discretion of the Milk Control Board. It is said that there was no investigation by legislative committee, such as preceded the passage of the New York act, but the Virginia act was hastily passed on the last day of the legislative session; that under Section 3 (i) the act does not become effective in any marketing area until the commission, after public hearing, determines that it will be to the public interest to exercise its powers therein, and that the commission is authorized to withdraw from any market after a similar hearing and determination; that the failure of the legislature to exercise its own authority is further shown by the provision of Section 3 (i) which gives to a majority of the producers of milk produced and to a majority of the distributors in any market acting jointly the right to cause the Commission to withdraw from that market; and that finally, there was a lack of definite action on the part of the legislature because it made no provision for the termination of [fol. 114] the act other than Section 17 which provides that the period of public emergency, during which the act shall be effective, shall be until the legislature designates the termination, or if it be not in session, the date designated by the proclamation of the governor.

This construction of the act cannot in our opinion be upheld. We may not disregard the positive declarations of the preamble merely because there was no formal investigation by a legislative committee and the statute was passed on the last day of the session. Indeed the rejection of the measure proposed earlier in the session indicates that the subject had been considered with some deliberation. Nor is the interpretation contended for in accord with the decision of the Virginia court in Reynolds vs. Milk

Commission, which points to the legislative determination of fact in the preamble as indicating an imperative need of state control of the production and distribution of milk. Not only is this interpretation binding upon us as the construction of a state act by the highest court of the state, but it is in harmony with our understanding of the legislative intent. We do not think that the authority given to the Board to determine in what areas it should exercise its powers contradicts or nullifies the legislative finding, or amounts to an improper delegation of legislative power. It is merely left to the Board to ascertain whether trade practices, harmful to the public interest, are prevalent in a particular area, and if so, to exercise the power to make rules and regulations and fix prices for the milk produced and distributed therein. The New York act differed in that it was made effective generally, but broad discretion was conferred upon the State Milk Control Board under Section 312 of the act to investigate the reasonable costs and charges for producing milk and to fix the minimum prices to be paid to purchasers of milk in its various grades. Provisions quite similar to the Virginia act are found in the statutes [fol. 115] passed in 1935 in Alabama, p. 204, Section 5; in Wisconsin, Chapter 58, Sections 3 (1) (c), 3 (3) (a) and (b); and in Indiana, Ch. 281, Section 15.

There is no impropriety in the legislative delegation of authority to the executive to act or withhold action in carrying out the legislative intent in conformity with principles laid down in the governing law. Thus Congress may empower the President, when in his opinion the public safety shall require, to lay an embargo on ships in the ports of the United States. Field & Co. vs. Clark, 143 U. S. 649, 683; or to discontinue the suspension of commercial intercourse with foreign countries, required by an act of Congress; or to suspend by proclamation the free introduction into this country of enumerated articles when satisfied that unreasonable exactions are imposed upon the products of the United States by the country producing them, or to increase or decrease tariff duties so as to equalize the differences between costs of production at home and abroad. Hampton & Co. vs. United States, 276 U. S. 394. See also United States vs. Grimaud, 220 U. S. 506 and Fallbrook vs. Bradley, 164 U. S. 112.

Hence we reject the suggestion that the Arlington-Alexandria Milk Market was illegally established by the Milk Commission in the exercise of an arbitrary power and discretion conferred upon them by the legislature without any legislative standard of action to guide them. We also conclude that this action of the Commission is not invalidated because the legislature in Section 3 (i) directed the Commission to withdraw the exercise of its power from any market upon the written application of a majority of the producers and a majority of the distributors of milk, measured by volume, in said market acting jointly; or because the governor of the state was empowered by Section 17 of the act, if the legislature be not in session, to designate by [fol. 116] proclamation the termination of the period of public emergency during which the act shall be effective. No attempt has been made in this case to exercise the powers so described, and we have no occasion to decide whether they may ever be lawfully exercised by the persons named. But even if these provisions are invalid because they contain no guide as to the conditions under which the powers conferred may be exercised, it does not follow that the legislature has not actually found that the emergency exists. The incorporation of invalid sections does not destroy the whole act, because it is provided in Section 16 thereof that if any section, clause, sentence or paragraph thereof be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

Having declared the emergency and the necessity for regulation of the business, the legislature was not without power to delegate to the Board the authority to limit the market areas, to fix the prices to be charged therein, and to issue and revoke licenses to persons engaged in the milk business. These questions did not pass unnoticed by the Virginia court in Reynolds vs. Milk Commission, either in the majority or minority opinions, where references were made to the power of the board to make rules and regulations necessary to carry out the purposes of the act and to grant and refuse licenses, subject to the review of that court. It is clear that the court would not have sustained the act had the majority of the judges thought that an unconstitutional delegation of power had been granted. The New York act of 1933, Ch. 158, considered in the Nebbia case, provided in Section 312 (b) that the Board should fix

prices, which might vary in different markets, and designate the markets to which the prices should be applicable. Prices fixed by the Board did vary as to classes of dealers and localities. See Nebbia vs. New York, 291 U. S. 502, 520, [fol. 117] 540; and it does not appear that the act was deemed to be invalid on this account either in the Supreme Court of the United States or the Court of Appeals of New York. See People vs. Nebbia, 262 N. Y. 259. The question as to price was definitely decided adversely to the defendants' contention under the New Jersey Act in State vs. Newark Milk Co., 118 N. J. Eq. 504, 179 Atl. 116, 124, where it was held that the legislature having declared the general policy and set the standard to be followed, properly left it to the administrative agency to take proper steps to eliminate destructive trade practices and to fix prices with reference to the grade of milk, costs of production, marketing and transportation so as to permit a reasonable return to the producer and the milk dealers. A similar standard was set up in Section 3 (j) of the Virginia act. See also State vs. Lincoln Dairy Co., (Wisc.) 265 N. W. 197; Albert vs. Milk Control Board of Ind., 200 N. E. 688, 694; Rohrer vs. Milk Control Board of Pa., 186 Atl. 337; Franklin vs. State, (Ala). 169 So. 295; Miami Home Milk Producers Assn. vs. Milk Control Board, (Fla.) 169 So. 541. Compare, Griffiths vs. Robinson, 181 Wash., 438, 43 P. (2d) 977; Maryland Co-operative Milk Producers vs. Miller, (Md.) 182 Atl. 432; Van Winkle vs. Maier, (Ore.) 49 P. (2) 1140.

In the pending case, the Milk Commission held a public hearing to consider the propriety of exercising its powers in the area affected, and subsequently outlined the Arlington-Alexandria Sales Area and the Arlington-Alexandria Production Area, and passed rules and regulations which undertook to control the production and distribution of milk and fixed the prices to be paid for the product. There is no distinction between the action thus taken in conformity with the standards laid down by the legislature and conduct which was approved in the cited cases.

The plaintiffs emphasize the license provisions of the act, contending that here, in any event, are provisions so [fol. 118] devoid of legislative standard as to leave to the Commission the unrestricted power to grant or refuse a license to a dealer in milk in its arbitrary discretion; and it is contended that these provisions not only involve an

unlawful delegation of power, but in their effect amount to a denial of due process of law guaranteed by the Fourteenth Amendment. The license provisions are as follows:

Section 3. (k) The commission may require all distributors in any market designated by the commission to be licensed by the commission for the purpose of carrying out the provisions of this act. The commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing. The commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a particular market or markets within the commonwealth.

Section 5. An application to the commission for a license to operate as a distributor shall be made by mail or otherwise within five days after the provisions of this act become effective in a market, and as to any distributor thereafter beginning business, before such distributor shall begin such business therein. The application shall be made on blanks furnished by the commission for the purpose.

Section 6. Any order of the commission in refusing to issue a license, or suspending or revoking a license, may be reviewed on appeal to the Supreme Court of Appeals.

Section 8. * * * In the event any person shall fail to comply with any rule, regulation or order of the commission, * * * it shall be the duty of the Hustings Court of the City of Richmond, * * * upon application of the commission, to compel obedience by attachment proceedings for contempt. * * *

Section 12. In the event of violation of any provision of this act, in addition to any other remedy, the commission may apply to any court of record in the city of Richmond for relief by injuction, if necessary, to protect the public interest, without being compelled to allege or prove that any adequate remedy at law does not exist.

Section 13. Penalties. Any person violating any provision of this act or of any license issued by the commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more

than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. • • •

The stipulation shows that the Milk Commission has threatened to invoke against High the remedy by injunction provided in Section 12 of the act, so as to restrain him from [fol. 119] continuing his business as a milk dealer without first having obtained the required license, and also from violating the regulations of the commission as to retail sale prices. It does not appear that High has ever made application for a license or intends so to do; and the only reasonable inference to be drawn from the institution and prosecution of this case is that the plaintiffs, regarding the act as unconstitutional, propose to continue their trade practices irrespective of its provisions.*

On the other hand, no conditions or restrictions upon the grant of licences have been imposed in the regulations of the Board, and there is no indication that a license would be withheld from any one willing to abide by the terms of the statute. In Reynolds vs. Milk Commission, 179 S. E. 507, 514, it was said that the license provision was not challenged. It might be proper also in the pending case to disregard it in the absence of arbitrary and unreasonable conduct on the part of the commission, and of any evidence that such conduct is contemplated. Nevertheless, it is not inappropriate to point out that the license provisions of the act should not be interpreted to vest the Board with the absolute power to grant or refuse licenses, if any other reasonable instruction can be adopted. Such a grant of power would be invalid and the attempt to ex-

---

* No other Milk Control Act, to which our attention has been called, contains conditions of like breadth. The New York Act of 1933, for example, contains in Section 303 (3) specific terms listing the acts or omissions which justify the rejection or suspension of a license, such as unreasonable rejection by a distributor of milk purchased from a producer or failure to pay for milk purchased, or violating any provision of the act.

ercise it arbitrarily would be restrained by a court of equity as a violation of the due process clause of the Fourteenth Amendment. Yick Wo vs. Hopkins, 118 U. S. 356; Lieberman vs. Van De Carr, 199 U. S. 552; Douglas vs. Noble, 261 U. S. 165; Lehmann vs. State Board of Public Accountancy, 263 U. S. 394.

[fol. 120] In our opinion, the act is susceptible of a more reasonable interpretation. It was not the intent of the legislature to confer upon the administrative board the extraordinary power to determine at will who should and who should not engage in the distribution of milk, but rather to render available to the Milk Commission and the local boards a list of authorized distributors of milk and to enable the authorities more readily to supervise the business of distribution and to enforce the rules, regulations and orders promulgated by the Board. In the absence of provision to the contrary, it would appear to be the duty of the Board to issue a license to any distributor complying with the statute and to preserve his license until some violation of the act or of a regulation or order had taken place. Such a standard would be sufficient to sustain the act although less specific in detail than other similar statutes. In Liebermann vs. Van De Carr, 199 U. S. 552, the Supreme Court considered a section of the Sanitary Code of New York City, which provided that no milk should be received for sale and delivered in the City of New York without a permit in writing from the Board of Health. It was objected that the statute devolved upon the Board of Health absolute and despotic power to grant or withhold permits to milk dealers and was therefore not due process of law. The Supreme Court, commenting on the decisions of the New York courts which indicated the power to issue or withhold permits must be used in the exercise of a reasonable discretion and that arbitrary action and unjust discrimination would not be tolerated, said:

"That this court will not interfere because the states have seen fit to give administrative discretion to local boards to grant or withhold licenses or permits to carry on trades or occupations, or perform acts which are properly the subject of regulation in the exercise of the reserved power of the states to protect the health and safety of its people there can be do doubt."

After citing certain cases, the court continued:

"These cases leave in no doubt the proposition that the [fol. 121] conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the state is not violative of rights secured by the Fourteenth Amendment. There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of state authority, this court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a federal court."

In Smith vs. Cahoon, 283 U. S. 553, 562, it was said:

"The principle is well established that when a statute, valid upon its face, requires the issue of a license or certificate as a condition precedent to carrying on a business or following a vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration."

See also Lehmann vs. State Board of Public Accountancy, 263 U. S. 394; Continental Baking Co. vs. Woodring, 286 U. S. 352, 366-7; The Problem of Apparently Unguided Administrative Discretion by Lewis Allen Sigler, 19 St. Louis L. R. 261, 291, et seq.

The cases we have cited also dispose of the contention that the enforcement of the act necessarily entails a denial to the plaintiffs of the equal protection of the laws and the due process of law in violation of the Fourteenth Amendment. Thus in Nebbia vs. New York, supra, it was held that a storekeeper was not denied the equal protection of the laws by an order which required him, if he purchased his supply from a dealer, to buy and sell the product at a minimum price, whereas the dealer might buy his supplies from the farmer and sell them at lower prices, and that such an order was not on its face arbitrary or unreasonable, as there are obvious distinctions between the two sorts of merchants which might well justify a different treatment. Likewise, it was decided that there was no denial of due process in the general scheme of the act be-

cause the state is free to adopt whatever economic policy may reasonably be deemed to promote the public welfare and if laws passed to that end have a reasonable relation to the legislative purpose and are neither arbitrary nor discriminatory, the requirements of due process are satis-
[fol. 122] fied. (See pages 530-537.)

Nor does the failure of the legislature of Virginia to provide for an appeal to the courts from the decisions or orders of the Board in relation to such matters as the determination of market areas and the fixing of prices amount to a denial of due process. It is true that if a legislature attempts to make the findings of fact of its agencies conclusive, even though the findings are wrong and constitutional rights have been invaded, the legislative action is invalid, for the judicial power of the courts cannot thus be circumscribed. St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38; Ohio Valley Water Co. vs. Ben Avon, 253 U. S. 287; Chicago M. & St. P. R. Co. vs. Minnesota, 134 U. S. 418. But the statute under consideration does not attempt to circumscribe the powers of a court, and it is not invalid simply because it does not specifically provide for access to the courts. Such access always exists if there is any arbitrary action on the part of the legislature or of a legislative agency which deprives a citizen of his constitutional rights. See Prentis vs. Atlantic Coast Line, 211 U. S. 210; Louisville & Nashville R. R. Co. vs. Garrett, 231 U. S. 298, 310; Coal & Coke Ry. Co. vs. Conley, 67 W. Va. 129, 67 S. E. 613; Weimer vs. Bunbury, 30 Michigan, 201.

It seems also to be suggested that the whole act violates the Fourteenth Amendment because of the penal provisions of Section 8 and 13. Section 8 imposes a penalty not exceeding $100. or imprisonment not exceeding 90 days upon any person failing or refusing to comply with any subpoena issued by the Commission and each day during which the violation continues is deemed a separate offence. Section 13 imposes a penalty by fine of not less than $25. or more than $100. or imprisonment in jail for not less than thirty days nor more than one year, or both fine and imprisonment, upon any person violating any provision of the act or of any license issued by the Commission, and each day dur-
[fol. 123] ing which the violation continues is deemed a separate violation. No attempt has been made in this case to enforce a penalty under either section. Even if it be sup-

posed that these penalties are so excessive in their cumulative effect that defense in a criminal case would not afford a reasonable opportunity to test the propriety of the action of the commission, it does not follow that the whole act is invalid. The procedure to be followed with regard to such penalties, when the enforcement of the orders of a legislative agency or administrative body is resisted on constitutional grounds, is suggested by the decision in Oklahoma Operating Co. vs. Love, 252 U. S. 331. Under the statute considered in that case, the order of the State Corporation Commission was not reviewable in any court of the state and the only opportunity for a judicial test was to disobey the order and to apply to the Supreme Court, meanwhile running the risk of the imposition of accumulating penalties, not exceeding $500. a day. It was held that the provision for the enforcement of the act by penalties was violative of the Fourteenth Amendment, and that the plaintiff was entitled to a temporary injunction in the federal court restraining the enforcement of the penalty pending the final hearing upon the constitutionality of the order. If, upon final hearing, the order should be found to be invalid, permanent injunction against the enforcement of the order should be issued, and likewise, if the order should be found to be lawful, permanent injunction should nevertheless be issued to restrain enforcement of penalties pendente lite, provided that it be found that the plaintiff had reasonable ground to contest the order. Compare Missouri Pac. R. Co. vs. Nebraska, 217 U. S. 196; Wadley Southern R. Co. vs. Georgia, 235 U. S. 651.

The plaintiffs also complain that the action of the Milk Board in establishing the market area and fixing the minimum prices for production and distribution of milk was not had in accordance with the provisions of the statute, and [fol. 124] was taken in violation of due process of law. The point relates to the nature of the public hearing which the Commission conducted. Section 3 (i) provides that the Commission shall not exercise its power in a market until a public hearing has been held for such market and the Commission determines that it will be to the public interest to exercise its powers therein; and Section 3 (j) provides that the Commission, after public hearing and investigation, may fix the prices to be paid producers by distributors and to be charged in the wholesale and retail distribution

of milk, taking into consideration in determining the reasonableness of the prices, the cost of production and distribution, and the welfare of the general public.

A public meeting was held in Richmond, Virginia, on February 20, 1936, at which were present a score of dairymen and milk producers and some discussion as to the establishment of the market area and the prices of milk took place. It is stipulated that thereafter the Commission established the area and the rules and regulations not only upon the basis of the information obtained by it at this public hearing, but also upon the basis of information subsequently furnished it by interested persons during the month of March, the Commission having announced at the hearing that it would receive additional communications. The Commission also took into consideration certain treatises which the Commission had in its files or received subsequent to the hearing bearing upon the general subject of the marketing of milk. It is contended that not only was the evidence presented at the hearing entirely inadequate to enable the commission to ca[redacted] the duties imposed upon it by the act, but that the [redacted]ission violated the rules or proper procedure when [redacted] into consideration material not offered at the hearing.

The plaintiffs particularly rely [redacted] decision in Morgan vs. United States, 56 S. Ct. 906, which dealt with the [fol. 125] duty imposed upon the Secretary of Agriculture to grant a full hearing and receive evidence before fixing rates for stock yard services under the Packers' and Stock Yards' Act of 1921. It was held that while the order of the Secretary was legislative, the proceeding had special attributes, and that the Secretary was required to make his determination in accordance with the procedural requirements contemplated by the statute, including a full hearing and the reception of evidence adequate to support the necessary findings of fact. Attention was called to the provision of the Packers' and Stock Yards' Act which makes applicable to the jurisdiction, powers and duties of the secretary, all laws relating to the suspension or restraint of the enforcement of orders of the Interstate Commerce Commission. The cases cited by the Supreme Court show that it is well established that a proceeding of this character before the Interstate Commerce Commission has a quasi judicial character and that the usual incidents of due proc-

ess applicable to an adversary proceeding must be followed.

But it is our view, expressed in the absence of a controlling interpretation by the state court, that these cases have no application to the sort of hearing contemplated by the Virginia Milk Control Act. The proceeding before the Milk Commission was not quasi judicial but legislative. It is true that the act made provision for a public hearing without which the Commission was not authorized either to exercise its powers in any market area or to fix prices; but this hearing was to be of the same nature as that held by a legislative committee in considering proposed legislation. The act contains no directions as to the kind of notice to be given, and evidently merely contemplated notice by advertisement to the general public. No other notice was feasible, considering the large number of persons engaged in production and distribution of milk. The commission [fol. 126] was undoubtedly justified in the exercise of its legislative function in taking into consideration not only the facts presented at the public hearing, but those which came to it subsequently from interested parties or were disclosed by its own investigation into the facts and the literature bearing upon the subject. See State vs. Newark Milk Co., 179 A. 116, 125-6; Norwegian Nitrogen Co. vs. United States, 288 U. S. 296, 308.

Even if the commission's hearing was quasi-judicial, the plaintiffs have small ground to complain. Although wide publicity was given prior to the hearing, the plaintiffs failed to attend and offer evidence; nor have they since applied to the Board for a modification of this action on the ground that it was arbitrary or ill advised. The courts have quite generally taken the position that one who complains of the unreasonable character of rules and regulations adopted by an administrative board must seek relief from the board before applying to the courts. See Red "C" Oil Mfg. Co. vs. Board of Agriculture, 222 U. S. 380, 394; Hegeman Farms Corp. vs. Baldwin, 293, U. S. 163, 172; Peterson Baking Co. vs. Bryan, 290 U. S. 570, 575; Reynolds vs. Milk Commission, 179 S. E. 507, 515; Rohrer vs. Milk Control Board, 186 Atl. 326.

Finally, the complainants say that the act and the regulations in pursuance thereof are invalid because they impose a burden on interstate commerce in violation of Sections 8 and 10 of Article 1 of the Federal Constitution. The

argument rests, so far as Section 8 is concerned, upon the interpretation of certain provisions of the act to mean that a distributor of milk in an area established by the Commission is forbidden to buy from a distributor located beyond the borders of the state unless the latter shall have first obtained a license from the Commission, and also that the distributor beyond the state, unless licensed, is forbidden to make such a sale; and that if the foreign distributor is licensed, he shall conform to the prices fixed by the com- [fol. 127] mission and shall comply with its rules and regulations and orders, subject to incurring the penalties prescribed by the act. This interpretation is based upon the definition of "distributor" in Section 1 of the act to include persons, wherever located or operating, whether within or without the Commonwealth of Virginia, and upon the provisions of Section 4 that no distributor in a market in which the provisions of the act are in effect shall buy milk from producers or others for sale within the state, or sell milk within the state unless the distributor is duly licensed under the provisions of the act, and providing further that it shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed as required by the act.

If the act is given this meaning, it is doubtless invalid as a direct and unconstitutional burden on interstate commerce. In Baldwin vs. G. A. Seelig, 294 U. S. 511, the Supreme Court held that a law or regulation of the State of New York was invalid, as a violation of Article I, Sec. 8, Clause 3 of the Constitution, which prohibited the sale of milk imported from another state unless the price paid therein to the producer was equal to the minimum prescribed by New York for purchases from local producers. We think that the act does not have the meaning attributed it, although the language of the sections under discussion give some support to the complainants' argument; for when the act is considered as a whole, including the admonition of Section 14 that no provision of the act shall be construed to apply to foreign or interstate commerce except insofar as the same may be effective pursuant to the United States Constitution, it is seen that the act was not designed to apply to a distributor beyond the state either as to prices or licenses.

Section 3 (j) of the act gives the Commission power to establish markets and to fix prices to be paid to producers

by distributors, and wholesale and retail prices to be [fol. 128] charged by distributors therein. The term "market" means any city or town of the commonwealth or two or more cities and towns and surrounding territory designated by the commission as a natural marketing area. Obviously the area designated is to be confined by the Commission to territory within the State of Virginia, and consequently the power of the commission to fix prices in any market is to be enforced only within the state.

Likewise, Section 3 (k) provides that the Commission may require all distributors in any market designated by the commission to be licensed by the commission, so that here also the powers of the commission are restricted to Virginia territory.

Sections I (II) and 4 are broader in their literal significance; but when it is borne in mind that the Dairy in the instant case is not required by the act to be licensed, or to sell at prices fixed by the commission, since it is located in Washington and is not a distributor in any market designated by the commission, it is seen that the act does not forbid High from purchasing milk from the Dairy in the District of Columbia, or fix the price which he shall there pay. Furthermore, even if the plaintiffs correctly construe these provisions of the act, the whole does not fall because Section 16 provides that if any section, clause, sentence or paragraph be declared unconstitutional, the remainder of the act shall not be affected thereby.

The violation of Section 10 of Article 1 of the Constitution complained of is that the act imposes a tax or assessment upon milk imported into Virginia and therefore without the consent of Congress, lays an impost or duty upon imports not absolutely necessary for executing its inspection laws. The assessment complained of was provided to cover the expenses of the Milk Commission and the local Milk Boards to be appointed to carry out the purposes of the act. The relevant provisions of the act and of the regulations in pursuance thereof are as follows:

[fol. 129] Section 9. The Milk Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the local milk boards in the form of monthly assessments, and the local milk boards shall pay the assessments so levied. The assessments so

levied shall not exceed two cents per hundred pounds of milk handled in each market in which the provisions of this act are in operation.

Section 11. (b) Expenses.—The expenses of the milk board, including salaries and/or the per diem of such personnel as the board finds it necessary to employ to properly carry out its functions under this act, and including the assessments levied by the State Milk Market Commission, shall be met by an assessment of not over two cents per hundred pounds of milk and/or cream (converted to terms of milk of four per cent butterfat) handled by distributors and not over two cents per hundred pounds of milk and/or cream (converted to terms of milk of four per cent butterfat (sold by producers.

Regulation No. 6. Assessments by the Milk Board. Each distributor shall pay to the Milk Board all assessments levied on him by the Milk Board (except on that milk which has been purchased from licensed distributors) and shall deduct and pay to the Milk Board all assessments levied by the Board on each producer delivering milk to him. No assessment on producers shall exceed 2¢ per hundred pounds of milk, and no assessment on distributors shall exceed 2¢ per hundred pounds of milk. 1¢ per hundred pounds of milk shall be levied and collected by the Milk Board on all milk received by a distributor and 1¢ per hundred on all milk sold or used by a distributor. Such assessment shall be collected on the fifteenth day of each month following the previous delivery period, and delivered to the secretary of the State Milk Commission for deposit to the account of the State of Virginia.

It thus appears that the Milk Commission, in order to cover its own expenses, has directed the levy of an assessment of 1¢ per hundred pounds on milk received by a distributor and 1¢ per hundred pounds on milk sold by a distributor. The local milk board, when set up, would be empowered to levy an additional sum not exceeding the maximum provided in the act to cover its own expenses. The terms of these sections of the act and of Regulation 6, it is urged, would require the dairy in Washington, if licensed as a distributor to handle milk for sale in Virginia, to pay an assessment not exceeding 2¢ per hundred pounds on all

milk sold by it to High in Washington and shipped by it in interstate commerce to his stores in Virginia. We need not stop to consider this point for as we have seen, the dairy is not required by the act to take a license.

However, it is also said that even if the dairy be not licensed as a distributor, nevertheless the assessment would [fol. 130] bear upon interstate commerce, because High, purchasing all of the milk sold by him in Virginia from the dairy, would be required to pay an assessment thereon of not more than 2¢ per hundred pounds, an assessment he would not have to pay under Regulation 6 if he purchased his milk from a Virginia distributor. Under the law, High would not pay an assessment on milk purchased by him from a licensed distributor in Virginia, because the assessment would have already been paid by the latter; but if High should buy from a producer in Virginia, he would pay for the use of the Milk Commission 1¢ per hundred pounds, and the remainder of the assessment would be deducted from the price paid the producer. Even so, it is difficult to understand how interstate commerce would be burdened or interfered with as a practical matter. Obviously, the sales by the dairy to High in Washington, and the subsequent interstate shipment of the goods would not be curtailed if the dairy, not being subject to Virginia price regulation, could continue to sell cultured whole milk at its wholesale price of 6¢ per quart as against 11¢ which a Virginia distributor would be required to charge. The assessment of 2¢ per hundred pounds paid by High in Virginia would be exactly the same as that borne by milk produced and distributed in Virginia; and the imposition of the assessment puts the merchandise shipped from Washington on equality with all other merchandise in the state, and constitutes no hindrance to the introduction of the goods from Washington into the state for sale upon the basis of equal competition with the local product.

Furthermore, the assessment is levied upon the goods after they have reached their destination in Virginia and the state has acquired the power to impose a tax or assessment upon them to defray the expenses of the administration of the law. It is well established that there is no burden upon interstate commerce from the imposition of [fol. 131] a state tax upon goods which have come to rest in the state at the end of interstate transportation, provided

that the state law levies the same tax on all goods of the same sort without regard to their origin. The prohibition contained in Article 1, Section 10, Paragraph 2 of the Constitution forbidding a state to lay imposts or duties on imports or exports is not applicable to such a statute and the validity thereof must be determined by deciding whether it amounts to a regulation of interstate commerce in violation of Article I, Section 8, Paragraph 3 of the Constitution. In Sonneborn Bros. vs. Cureton, 262 U. S. 506, the Supreme Court was called upon to decide whether oil transported from New York to the warehouse of the taxpayer in Texas and there held for sale in Texas in original packages and subsequently sold in Texas in such packages, might be made the basis of an occupation tax based upon the gross amount of sales in the state, the tax applying to all wholesale dealers in oil engaged in making sales and delivery in Texas. The Court said (508):

"Our conclusion must depend on the answer to the question: Is this a regulation of, or a burden upon, interstate commerce? We think it is neither. The oil had come to a state of rest in the warehouse of the appellants and had become a part of their stock with which they proposed to do business as wholesale dealers in the state. The interstate transportation was at an end, and whether in the original packages or not, a state tax upon the oil as property or upon its sale in the state, if the state law levied the same tax on all oil or all sales of it, without regard to origin, would be neither a regulation nor a burden of the interstate commerce of which this oil had been the subject."

The same doctrine was applied in Wiloil Corp. vs. Pennsylvania, 294 U. S. 169, 175, where it was said:

"Our decisions show that, if goods carried from one state have reached destination in another where they are held in original packages for sale, the latter has power without discrimination to tax them as it does other property within its jurisdiction. Woodruff vs. Parham, 8 Wall. 123; Brown vs. Houston, 114 U. S. 622, 632; American Steel & Wire Co. vs. Speed, 192 U. S. 500, 519-522; Sonneborn Bros. vs. Cureton, 262 U. S. 506. And as that rule applies whether the burden falls directly or indirectly (Banker Bros. Co. vs. Pennsylvania, 222 U. S. 210) it is not material

whether the tax is upon the sale and delivery or upon the property."

We find no ground in this case for equitable relief, and [fol. 132] therefore the application for temporary restraining order, and for interlocutory and permanent injunctions will be denied, and the bill of complaint will be dismissed.

[fol. 133] IN UNITED STATES DISTRICT COURT

In Equity. No. 363

HIGHLAND FARMS DAIRY, INCORPORATED, a Corporation, and LUTHER W. HIGH, Complainants,

vs.

J. S. AGNEW, Chairman, and KONE BRUGH and T. R. SNAVELY, as Members of the Milk Commission of the Commonwealth of Virginia, Defendants

FINAL DECREE DENYING INTERLOCUTORY INJUNTION AND DISMISSING BILL OF COMPLAINT—Entered and Filed October 24, 1936

This cause came on to be heard at Alexandria, Virginia, on July 30, 1936, upon a stipulation of facts to which the parties had agreed, and was argued by counsel orally and by briefs then and subsequently submitted; and the court accepted the stipulation as its findings of fact, and having considered the questions involved has reached the conclusions of law, for the reasons stated in its opinion filed herein on October 3, 1936, that the Act of the General Assembly of Virginia establishing the Milk Commission of Virginia, which was attacked in this case, and the orders of the Milk Commission of Virginia passed pursuant to said Act, did not involve a violation of the Fourteenth Amendment to the Federal Constitution or of the like provisions of the Constitution of Virginia as a denial of the equal protection of the law or of due process of law.

It is Therefore Ordered, Adjudged and decreed this 24th day of October, 1936: That the prayers of the plaintiffs herein for an interlocutory injunction and for a final in-

junction be and the same are hereby denied; and that the bill of complaint of the plaintiffs herein be and the same is hereby dismissed, the plaintiffs to pay the costs of this suit.

It is further ordered, adjudged and decreed, that the operation of this decree shall be stayed for fifteen days from this date in order to allow the plaintiffs an opportu- [fol. 134] nity to perfect an appeal to the Supreme Court of the United States.

(Sgd.) Morris A. Soper, United States Circuit Judge. (Sgd.) Luther B. Way, United States District Judge. (Sgd.) Robt. N. Pollard, United States District Judge.

[fol. 135] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed November 6, 1936

To J. S. Agnew, Chairman, and Kone Brugh and T. R. Snaveley, as the Members of the Milk Commission of the Commonwealth of Virginia:

Please Take Notice that pursuant to the statutes and rules of Court in such case made and provided, Highland Farms Dairy, Incorporated, and Luther W. High, the plaintiffs in the above-entitled cause, and each of them, have appealed and do hereby appeal to the Supreme Court of the United States from the final decree of the above-entitled Court heretofore made herein and entered on the 24th day of October, 1936, and from each and every part thereof.

(Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld, Counsel for Plaintiffs.

November 4, 1936.

Service of the within notice of appeal and the receipt of a copy thereof is hereby acknowledged this 4th day of November, 1936.

(Sgd.) Edwin H. Gibson, Assistant Atty. General of Counsel for State Milk Commission.

[fol. 136] IN UNITED STATES DISTRICT COURT

Petition for Appeal by Highland Farms Dairy, Incorporated, and Luther W. High, Plaintiffs—Filed November 6, 1936

The Highland Farms Dairy, Incorporated, and Luther W. High, the plaintiffs, being aggrieved by the final order or decree of the above-entitled Court heretofore made and entered on the 24th day of October, 1936, in the above-entitled cause, wherein, among other things, the said Court composed of the Honorable Morris A. Soper, United States Circuit Judge, the Honorable Luther B. Way, United States District Judge, and the Honorable Robert N. Pollard, United States District Judge, refused, after notice and hearing, to grant an interlocutory injunction and a permanent injunction, application for which was made pursuant to Section 266 of the Judicial Code, and dismissed the bill of complaint herein filed, do pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in Assignment of Errors as follows:

ASSIGNMENT OF ERRORS

The appellants assign the following errors on which they will rely on appeal to the Supreme Court of the United States from the decree made by this Court on the 24th day of October, 1936:

1. The District Court erred in holding that the Act of the General Assembly of Virginia, known as the Milk and Cream Act, approved March 20, 1934, was a proper exercise of the police power of the State.

2. The District Court erred in failing to hold that the [fol. 137] said Act was invalid as an improper delegation of legislative power to the Milk Commission.

3. The District Court erred in not holding that the powers conferred upon the Commission involved a denial of equal protection of the laws and a denial of due process in contravention of the 14th Amendment to the Constitution of the United States.

4. The District Court erred in not holding that the acts and regulations adopted by the Milk Commission were in-

valid because they constituted an interference on the part of the State with interstate commerce.

5. The District Court erred in not holding that the act of the Milk Commission in establishing a market, fixing minimum prices and adopting rules and regulations constituted a denial of due process because of procedural errors on the part of the Commission in not providing for a hearing in accordance with said Act.

PRAYER FOR REVERSAL

Wherefore, appellants pray that the decree denying their application for an interlocutory injunction and a final injunction and dismissing their bill of complaint be reversed and that the Statutory Court may be directed to reinstate the bill and grant the application for injunction therein prayed for.

Appellants further pray that citation be issued as provided by law and that a transcript of the record, proceedings and documents on which the final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Appellants further pray that the defendants herein may be enjoined and restrained from enforcing or attempting to enforce against them the provisions of an Act of the [fol. 138] General Assembly entitled "An act to provide for the supervision, regulation and control of the production, processing, transportation, storage, distribution and sale of milk and cream; to create a Milk Commission and local milk boards and to define and provide for the functions, duties and powers thereof"; approved March 20, 1934; and from enforcing or exercising their powers as members of the Milk Commission of the Commonwealth of Virginia in the Arlington-Alexandria Milk Market, until their appeal shall have been fully heard and determined.

Appellants further pray that a proper order be made relating to the security to be required of them.

(Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld, Counsel for Plaintiffs.

[fol. 139] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Entered and Filed November 6, 1936

The plaintiffs in the above-entitled cause having prayed for the allowance of an appeal in the above-entitled case to the Supreme Court of the United States from the decree made and entered in the above-entitled suit by the above-entitled Court on the 24th day of October, 1936, and from each and every part thereof, and having presented and filed their assignment of errors and statements as to jurisdiction pursuant to the statutes and rules of Court in such cases made and provided,

It Is Ordered and Decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within 30 days from the date thereof, and the Clerk is directed to transmit to the Supreme Court of the United States a properly authenticated transcript of the record, proceedings and papers on which the decree was made and entered; and

It Is Further Ordered that security for costs on appeal be fixed in the sum of $1000.00.

(Sgd.) Robert N. Pollard, United States District Judge.

Dated November 6, 1936.

[fols. 140-144] Bond on appeal for $1,000.00, approved and filed November 16, 1936, omitted in printing.

[fol. 145] IN UNITED STATES DISTRICT COURT

APPLICATION OF PLAINTIFFS FOR STAY PENDING APPEAL—Filed November 19, 1936

To the Honorable Morris A. Soper, United States Circuit Judge; Honorable Luther B. Way, United States District Judge; Honorable Robert N. Pollard, United States District Judge:

Now come Highland Farms Dairy, Incorporated, and Luther W. High, the plaintiffs in the above-entitled cause, and represent to the Court as follows:

1. Plaintiffs, contemporaneously with the filing hereof, are filing in this Court, together with necessary supporting

papers, their petition for appeal to the Supreme Court of the United States from the final decree entered herein on October 24th, 1936, dismissing the bill of complaint herein brought to enjoin enforcement against the plaintiffs by the defendants of the Act of the General Assembly of the Commonwealth of Virginia known as the Milk and Cream Act, approved March 29, 1934, and the rules and regulations prescribed by the Milk Commission made thereunder.

2. Soon after the handing down of the decision in this cause, to-wit, on the 17th day of October, 1936, the defendants filed a bill or petition in the Law and Equity Court of the City of Richmond seeking an order directing the plaintiff, Luther W. High, to comply with the rules and regulations prescribed by said Milk Commission, the enforcement of which was sought to be enjoined in this cause and thereupon, without notice to the plaintiffs, or either of them, an injunction order was entered, a copy of which is herewith filed as a part of this petition. Thereafter, to-wit, on the 24th day of October, 1936, said injunction order was annulled, it having been understood and agreed that pending the decision of this Court upon the application for an inter- [fol. 146] locutory injunction and permanent injunction, no action would be taken by said defendants. Through a misunderstanding and lack of knowledge of the then representative of the defendants, the aforesaid injunction was applied for and issued. The said suit in the Law & Equity Court instituted by the said defendants against Luther W. High and others is still pending and it is believed that unless and until this Court enter its order herein staying and suspending, pending determination of appeal to the Supreme Court of the United States, the said defendants will by the prosecution of the suit, as aforesaid, or otherwise, in the attempted enforcement of penalties against Luther W. High, undertake the complete enforcement of the said Milk and Cream Act and the rules and regulations adopted pursuant thereto which will result in the destruction of the business of the said Luther W. High, as further fully set forth in the bill of complaint filed in this cause.

3. The issues involved in this cause involve important and far-reaching constitutional questions which should be submitted to and finally settled by the Supreme Court of the United States.

4. This Court has the authority to grant the stay herein prayed. Virginian Railroad Co. v. United States, 272 U. S. 658, 668, 675; Beaumont S. L. & W. R. R. Co. v. United States, 282 U. S. 74, 91, 92.

Wherefore, in view of the foregoing consideration and the importance of the questions presented and in order to fully protect their right of appeal, the plaintiffs respectfully pray that this Court enter its order herein staying and suspending, pending determination of appeal to the Supreme Court, the enforcement by the defendants of the said Milk Act and the rules and regulations made pursuant thereto, so far as the same shall affect the plaintiffs or either of them.

[fol. 147] (Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld, Counsel for Plaintiffs.

[fol. 148] VIRGINIA:

IN THE LAW AND EQUITY COURT, PART TWO, OF THE CITY OF RICHMOND

STATE MILK COMMISSION

v.

LUTHER W. HIGH, Trading as High's; K. A. WEBB, (MRS.) E. HOLLIDAY, (MRS.) L. HENDERSON and (MRS.) C. POWELL

DECREE

This day came the plaintiff, by the Attorney General of Virginia, and presented its bill duly verified by affidavit, and, by leave of court, filed its bill of complaint; whereupon, in accordance with the prayer of the bill, an injunction is awarded the plaintiff, enjoining and restraining the defendants, their agents, servants and employees, from selling milk, containing 3.25-4.1% butterfat, or a higher percentage of butterfat, at less than thirteen cents per quart retail at the places of business of the said Luther W. High within the Arlington-Alexandria milk market area, as provided in Regulation No. 4, subsection (a), of the rules and regulations adopted by the State Milk Commission for the supervision and control of the Arlington-Alexandria milk market.

It is further ordered that an injunction is awarded the plaintiff, enjoining and restraining the defendants, their agents, servants and employees, from distributing milk or cream in the said Arlington-Alexandria milk market area unless and until they shall have made the applications for licenses required by section 5 of chapter 357, Acts of 1934.

This injunction, unless sooner enlarged or dissolved, shall remain in force until December 1st, 1936. The plaintiff [fol. 149] being a public governmental agency, no bond is required of it.

[fols. 150-151] Citation, in usual form, showing service on Edwin H. Gibson et al., filed November 16, 1936, omitted in printing.

[fol. 152] IN UNITED STATES DISTRICT COURT

ORDER ON APPLICATION FOR STAY—Entered and Filed November 19, 1936

This day came the plaintiffs and filed their application for stay pending appeal.

And counsel for the defendants having stated in open court that no attempt will be made by the defendants to enforce in the Alexandria-Arlington Market the provisions of the Milk and Cream Act of the Commonwealth of Virginia and the rules and regulations made by the Milk Commission pursuant thereto until this appeal shall have been finally heard and determined;

It is Adudged, Ordered and Decreed that plaintiffs' application for injunction pending such appeal be, and the same hereby is, denied.

(Sgd.) Morris A. Soper, United States Circuit Judge.
(Sgd.) Luther B. Way, United States District Judge. (Sgd.) Robt. N. Pollard, United States District Judge.

Dated Nov. 19, 1936.

[fol. 153] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 21, 1936

To the Clerk of the above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the Office of the Clerk of the Supreme Court of the United States for use on appeal to the Supreme Court of the United States, and you will please incorporate in such transcript the following portions of the record in this cause:

1. Amended bill of complaint and exhibits filed therewith.
2. Motion for temporary restraining order.
3. Order filing amended bill of complaint and convening court.
4. Stipulation of facts and exhibits therewith.
5. Affidavit of Philip Rosenfeld and exhibits therewith.
6. Joint and separate answer of J. S. Agnew, Chairman, and Kone Brugh and T. R. Snavely, as members of the Milk Commission of the Commonwealth of Virginia.
7. Amended answer and motion to dismiss of defendants.
8. Order filing amended answer.
9. Order of the 29th day of May, 1936, refusing temporary restraining order and continuing application for an interlocutory injunction.
10. Opinion of the Court rendered October 3, 1936, and final decree dismissing bill of complaint, October 24, 1936.
11. Notice of appeal directed to the defendants with acknowledgment of service thereof by the Attorney General.
12. Petition for appeal.

[fol. 154] 13. Order allowing appeal.

14. Application of plaintiffs for stay pending appeal.
15. Notice of filing application of plaintiffs for stay pending appeal, with acknowledgment of service by the Attorney General.
16. Order denying application for injunction pending appeal and noting stipulation of defendants that no attempt will be made pending appeal to enforce in the Alexandria-Arlington Market the Milk and Cream Act.
17. Præcipe for transcript of the record.

18. Clerk's certificate of transcript of record, said transcript to be prepared as required by law and the rules of the Supreme Court of the United States, and to be filed in the Office of the Clerk of the Supreme Court of the United States, in Washington, on or before the 6th day of December, 1936.

Dated this 16th day of November, 1936.

(Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld.

Service of the above præcipe accepted and acknowledged this 16th day of November, 1936.

(Sgd.) Abram P. Staples, Attorney General of Virginia and Counsel of record for Appellees. (Sgd.) Edwin H. Gibson, Of Counsel for Appellees.

[fols. 155-157] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed November 21, 1936

It is hereby stipulated by and between counsel for appellants and appellees that the Clerk of the District Court of the United States for the Eastern District of Virginia shall include in the transcript of record to be filed in the Supreme Court of the United States all those parts of the record and only those parts designated in the præcipe of the appellants filed and served herein.

Dated this 16th day of November, 1936.

(Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld, Counsel for Appellants. (Sgd.) Edwin H. Gibson, Counsel for Appellees.

[fol. 158] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TRANSCRIPT OF RECORD ON APPEAL MAY BE FILED—Entered and Filed December 2, 1936

Good cause appearing therefor, it is hereby ordered that the plaintiffs in the above-entitled cause may have, and

they are hereby allowed to and including December 15, 1936, within which to docket, and for the Clerk of this Court to transmit to the Clerk of the Supreme Court of the United States, a properly authenticated transcript of the record, proceedings and papers on which the decree was made and entered.

(Sgd.) Robt. N. Pollard, United States District Judge.

Dated December 2, 1936.

[fol. 159] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 160] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED ON AND OF PARTS OF THE RECORD NECESSARY TO THE CONSIDERATION THEREOF—Filed December 17, 1936

Appellants, both in brief and on oral argument, will rely upon each of the points raised specifically in their assignments of error filed herein, which said points are as follows:

Point I

That the District Court erred in holding that the Act of the General Assembly of Virginia known as the Milk and Cream Act, approved March 29, 1934, was a proper exercise of the police power of the State. The existence of an emergency, upon which the price-fixing power is based, is not determined by the legislative body but the determination is delegated to an administrative agency.

Point II

That the District Court erred in failing to hold that said Milk and Cream Act was invalid as an improper delegation of legislative power to the Milk Commission. The legislative power of the sovereign state is, under the Constitution of Virginia, vested solely in the General Assembly, but the

Act complained of attempts to confer the legislative power of price-fixing and the determination of who may or may not engaged in the private business of producing and distributing milk is left to an administrative body with no measure or standard or principles fixed by which the administrative body is to be guided.

Point III

That the District Court erred in not holding that the powers conferred upon the Commission involved a denial of equal protection of the law and a denial of due process in contravention of the Fourteenth Amendment to the Constitution of the United States.

Point IV

That the District Court erred in not holding that the acts [fol. 161] and regulations adopted by the Milk Commission, pursuant to said Milk and Cream Act, were invalid because they constitute an interference on the part of the State with interstate commerce and in violation of Section 8, and Section 10, of Article I of the Constitution of the United States.

Point V

That the District Court erred in not holding that the Act, in establishing a market fixing minimum prices and adopting rules and regulations constitute a denial of due process of law because of procedural errors on the part of the Commission in not providing for a hearing in accordance with said Act.

The appellants respectfully represent that the whole of the record as filed is necessary for the consideration of the above-mentioned points.

(Sgd.) E. Randolph Williams, T. Justin Moore, Philip Rosenfeld, Counsel for Appellants.

Legal and timely service of the foregoing statement of the points to be relied on by appellants and of the parts of the record which they think necessary for the consideration thereof, pursuant to Rule 13, Paragraph 9, is hereby accepted and receipt of a copy thereof is hereby acknowledged for and on behalf of J. S. Agnew, Chairman, and Kone

Brugh and T. R. Snavely, as members of the Milk Commission of the Commonwealth of Virginia.

(Sgd.) Edwin H. Gibson, Counsel of Record for Appellees.

[fol. 162] [File endorsement omitted.]

Endorsed on cover: File No. 41,113. E. Virginia, D. C. U. S., Term No. 573. Highland Farms Dairy, Incorporated, and Luther W. High, appellants, vs. J. P. Agnew, Chairman, Kone Brugh, and T. R. Snavely, as Members of the Milk Commission of the Commonwealth of Virginia. Filed December 17, 1936. Term No. 573, O. T., 1936.